

**Promega Corporation**  
**vs.**  
**Life Technologies**  
**Corporation, et al.**

Deposition of  
**Charles Moehle**  
**(Highly Confidential-**  
**Attorneys' Eyes Only)**

Volume 1  
12/12/2011

Reported By: Brandon Combs  
Job Number: 12244

**Charles Moehle (Highly Confidential-Attorneys' Eyes Only)**

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20		20	
21		21	
22		22	
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13	3 Life Technologies Forms Team to Focus on IP Licensing for PCR, other Products. 59	13	--oOo--
14	4 Out-Licensing Rollup. 71	14	BE IT REMEMBERED THAT, pursuant to Notice and
15	5 Settlement Agreement. 104	15	on Monday, December 12, 2011, commencing at 9:14 a.m.
16	6 Cross License Agreement. 104	16	thereof, at 101 Lincoln Centre Drive, Foster City,
17	7 License Agreement. 111	17	California, before me, BRANDON D. COMBS, a Certified
18	8 Email from Hsiaoli Chen to Charles Moehle, 12/4/2008. 112	18	Shorthand Reporter, personally appeared
19	9 Email from Hsiaoli Chen to Stuart Hepburn, 12/4/2008. 112	19	CHARLES MOEHLE,
20	10 Amendment. 113	20	called as a witness by the Plaintiff being first duly
21	11 Letter from Traci Libby to Promega Corporation, Oct 20, 2009. 121	21	sworn, testified as follows:
22	12 Email from Charles Piazza, to Rolando Brawer, 8/21/2009. 124	22	--oOo--
23		23	TROUPIS LAW OFFICE, LLC, 8500 Greenway
24		24	Boulevard, Suite 200, Middleton, WI 53562, represented
25		25	by JAMES R. TROUPIS, Attorney at Law, appeared as
			counsel on behalf of the Plaintiff.

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1	Phone: 608-807-4096 Email: jtroupis@troupislawoffice.com	09:16:11	1	Also, we'll take breaks from time to time.
2		09:16:13	2	And again, if you want a break, ask and we'll certainly
3	PARSONS, BEHLE & LATIMER, 201 South Main	09:16:18	3	take a break during today's deposition.
4	Street, Suite 1800, Salt Lake City, UT 84111,	09:16:20	4	Let me ask you first, is there anything, any
5	represented by KRISTINE JOHNSON, Attorney at Law,	09:16:23	5	reason why you cannot or would not able to give honest
6	appeared as counsel on behalf of the Defendant Life	09:16:26	6	answers today?
7	Technologies Corporation.	09:16:27	7	A. No, there's no reason.
8	Phone: 801-532-1234 Email: kjohnson@parsonsbehle.com	09:16:28	8	Q. Have you been in a deposition before?
9		09:16:31	9	A. Yes, I have.
10	ALSO PRESENT: Joseph Mourgos (Videographer),	09:16:31	10	Q. How many times? Under what circumstances?
11	Randall Dimond, Daniel Ghoca, Craig Christianson.	09:16:34	11	A. Maybe four or five, both as a 30(b)(6)
08:44:50	--oOo--	09:16:39	12	witness, as an expert for the company, and also as an
09:13:55	THE VIDEOGRAPHER: Here begins Video 1 of	09:16:42	13	individual, as I call it, as myself.
09:13:58	Volume I in the deposition of Charles M. Moehle, in the	09:16:45	14	Q. When it's on behalf of the company, at both
09:14:03	matter of Promega Corporation versus Life Technologies	09:16:48	15	Applied Biosystems and Life Technologies or just
09:14:08	Corporation, et al., in the United States District	09:16:51	16	recently for Life Technologies?
09:14:10	Court, Western District of Wisconsin. Case number is	09:16:52	17	A. This is the first time I've been deposed since
09:14:16	10-CV-281-BBC. Today the date is December 12, 2011, and	09:16:54	18	the merger where I'm in Life Technologies.
09:14:26	the time on the video monitor is 9:14 a.m.	09:16:57	19	Q. So those prior appearances on behalf of
09:14:31	The video operator today is Jeff Mourgos	09:17:00	20	companies would have been prior corporate interests or
09:14:33	representing Combs Reporting, 595 Market Street, Suite	09:17:04	21	corporations that you worked for?
09:14:34	620, San Francisco, California. This video deposition	09:17:05	22	A. All for Applera or ABI, the predecessor to
09:14:43	is taking place at 101 Lincoln Centre Drive, Foster	09:17:11	23	Life Technologies.
09:14:48	City, California, and was noticed by Troupis Law Office,	09:17:13	24	Q. What kind of personal matters would you have
09:14:53	LLC.	09:17:13	25	been -- you said you were deposed personally, as you're
		Page 6		Page 8
09:14:54	1 Counsel, please identify yourselves and state	09:17:16	1	being deposed today, as part of the company.
09:14:58	2 whom you represent.	09:17:19	2	A. Yes.
09:15:00	3 MR. TROUPIS: I'm Jim Troupis of Troupis Law	09:17:19	3	Q. In all prior depositions, was it always as an
09:15:00	4 Office, and I represent Promega Corporation. Also	09:17:23	4	employee of a corporation or were there individual
09:15:04	5 present with me from our office today is Brandon Lewis,	09:17:25	5	actions against you?
09:15:07	6 with our office. Also present, at least for parts of	09:17:27	6	A. Always as an employee.
09:15:10	7 this deposition, are Dr. Randall Dimond of Promega	09:17:29	7	Q. Okay. Thank you.
09:15:15	8 Corporation, as well as the general counsel, Craig	09:17:32	8	A. I guess if I need to speak up, let me know.
09:15:17	9 Christianson, and associate general counsel, Dan Ghoca.	09:17:36	9	Q. Talk for a moment, let me know a little bit
09:15:23	10 MS. JOHNSON: Christine Johnson of Parsons,	09:17:40	10	about your background. It is Dr. Moehle, isn't it?
09:15:25	11 Behle & Latimer for the defendants.	09:17:43	11	A. Yes. I usually don't go by Dr. Moehle, but I
09:15:28	12 THE VIDEOGRAPHER: The court reporter today is	09:17:47	12	have a Ph.D.
09:15:29	13 Brandon Combs of Combs Reporting, Incorporated.	09:17:49	13	Q. I was going to call you "Dr.," but I'll call
09:15:32	14 Would the reporter please administrator oath.	09:17:49	14	you whatever you would like.
15	--oOo--	09:17:51	15	A. Whatever you're comfortable with. You can
16	EXAMINATION BY MR. TROUPIS	09:17:52	16	call me by my first name or Mr. Moehle, as you prefer.
09:15:43	17 MR. TROUPIS: Q. Good morning, Dr. Moehle.	09:17:58	17	Q. Can you tell us your background, your
09:15:45	18 A. Good morning.	09:18:00	18	employment background.
09:15:47	19 Q. To begin with, this is a deposition in the	09:18:01	19	A. My employment background, as a former
09:15:49	20 Promega LTI litigation, and I wanted to make sure that	09:18:06	20	academic, I started at graduate school, in my mind. I
09:15:55	21 in the event that a question is not clear, please ask me	09:18:09	21	have a Ph.D. in yeast genetics, biology, from Carnegie
09:15:58	22 to clarify it. Your counsel may object or she may ask	09:18:14	22	Mellon. I spent five years at the National Institutes
09:16:01	23 me to clarify. My purposes are to get answers to the	09:18:18	23	of Health and a post-doctoral fellow and a -- I forget
09:16:04	24 questions, and if there's any discussion about what is	09:18:23	24	the exact title now, but essentially post-doctoral
09:16:07	25 meant, please ask. I will try to rephrase it.	09:18:26	25	fellow.

**Charles Moehle (Highly Confidential-Attorneys' Eyes Only)**

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09:18:26	1	From there I was recruited to a biotech	09:21:19	1	A. RiboGene was very much of a startup. It was a
09:18:31	2	company called RiboGene in Hayward, California.	09:21:24	2	young company that was intended to develop new
09:18:34	3	Initially I was a research scientist. And as time went	09:21:26	3	antibiotics, primarily, and then also chemotherapeutics,
09:18:38	4	on, I was partly in research and also in corporate	09:21:31	4	using a technology platform related to the protein
09:18:41	5	development, if you will.	09:21:36	5	synthesis.
09:18:42	6	From there I went to a company called Genelabs	09:21:37	6	Q. And there you said you did research?
09:18:45	7	Technologies, also in the Bay Area, where I was director	09:21:40	7	A. Initially, yes. I was a research scientist.
09:18:49	8	of business development. And from there to Chiron	09:21:43	8	Q. You mentioned the post-doc that you did at the
09:18:53	9	Corporation, with a similar title of director of	09:21:45	9	National Institute of Health.
09:18:57	10	business development, before joining Applied Biosystems	09:21:47	10	A. Uh-huh.
09:19:01	11	almost seven years ago. Applied Biosystems was acquired	09:21:47	11	Q. What was the focus, if there was a specific
09:19:05	12	by Invitrogen to form Life Technologies about three	09:21:50	12	focus?
09:19:09	13	years ago last month.	09:21:52	13	A. Yeast genetics, stringent response in yeast.
09:19:20	14	Q. Fair to assume you live in the area?	09:21:56	14	Q. Where was that at for NIH?
09:19:22	15	A. Yes.	09:21:59	15	A. Child health?
09:19:22	16	Q. You're in Northern California?	09:22:01	16	Q. What is the location?
09:19:25	17	A. Yes, I do.	09:22:03	17	A. Bethesda, Maryland.
09:19:25	18	Q. What is your home address?	09:22:07	18	Q. In Bethesda?
09:19:27	19	A. 3133 Alexis Place, A-L-E-X-I-S, Castro Valley,	09:22:08	19	A. Yeah, at the NIH.
09:19:34	20	California 94546.	09:22:10	20	Q. You mentioned that you graduated in yeast
09:19:43	21	Q. What did you do for -- explain a little bit	09:22:13	21	genetics in a Ph.D. Where was your undergraduate, where
09:19:45	22	what you did for Chiron and how long you were employed	09:22:16	22	was your undergraduate school?
09:19:48	23	there.	09:22:18	23	A. My undergraduate degree was at Northwestern
09:19:49	24	A. Sure. I joined Chiron in March -- sorry,	09:22:25	24	University in Evanston, Illinois. And my graduate
09:19:54	25	January of 2001 and left in October of 2004, so nearly	09:22:30	25	degree was at Carnegie Mellon in Pittsburgh,
		Page 10			Page 12
09:20:00	1	four years. I was director of business development. At	09:22:33	1	Pennsylvania.
09:20:05	2	various times, I supported different of the businesses.	09:22:35	2	As I recall, you're also from Northwestern.
09:20:07	3	We would do a little in-licensing, a little	09:22:38	3	Q. I was about to point out this, that we share
09:20:12	4	out-licensing, collaborations, supply agreements, things	09:22:41	4	the Wildcat background.
09:20:16	5	that helped the business move forward or other ways of	09:22:43	5	What year did you graduate from Northwestern?
09:20:19	6	monetizing IP.	09:22:45	6	A. '77 -- sorry, '81.
09:20:20	7	Q. What was Chiron's primary business at that	09:22:47	7	Q. Oh, well, you were after me, then.
09:20:23	8	time?	09:22:52	8	Did you grow up in Illinois, or did you grow
09:20:23	9	A. It was a pharmaceutical company. The primary	09:22:54	9	up in the Midwest?
09:20:27	10	business was developing and selling pharmaceuticals for	09:22:55	10	A. St. Louis.
09:20:31	11	cancer and infectious business and -- yeah, cancer and	09:22:59	11	Q. Moving forward, then, in time to the
09:20:35	12	infectious disease.	09:23:01	12	Applied Biosystems. So if you left Chiron, you went to
09:20:36	13	Q. And tell us a little bit about how long were	09:23:05	13	Applied -- and I can never get all the names right. So
09:20:38	14	you at Genelabs.	09:23:09	14	it was Applied Biosystems, Applera, they were known by a
09:20:39	15	A. I was at Genelabs for about two years. It was	09:23:14	15	variety of names. Did your employer change during that
09:20:43	16	more of a startup-type biotech company.	09:23:16	16	time, or was there a specific one of that group that was
09:20:46	17	Q. What was their focus?	09:23:20	17	your employer from 2004 until the merger with
09:20:49	18	A. They had a couple of foci, focuses. They had	09:23:24	18	Invitrogen?
09:20:57	19	a late-stage product that was for the treatment of lupus	09:23:25	19	A. So I just -- to clarify, start at the company
09:21:01	20	that they were hoping to get launched as a	09:23:30	20	in 2005, early 2005. The structure of Applera was
09:21:04	21	pharmaceutical. They also had a number of research	09:23:38	21	always complex. So that's why I hesitate a moment.
09:21:08	22	programs that were intended to develop new treatments,	09:23:43	22	There was a holding company called Applera that was the
09:21:12	23	primarily for infectious diseases.	09:23:46	23	holding company for Applied Biosystems and Celera, the
09:21:15	24	Q. That's the follow-on to Chiron.	09:23:49	24	two main operating groups. I was hired by the Applied
09:21:18	25	What about RiboGene, what did they --	09:23:54	25	Biosystems Group, and that's where my employment was

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09:23:57	1 until the merger with Invitrogen, and never with Applera	09:27:11	1 instance, but related to PCR.
09:24:02	2 per se and never with Celera, the other entity.	09:27:15	2 Q. The STR technology that's the subject of the
09:24:08	3 Q. I was aware of the problem with that	09:27:18	3 ongoing litigation, does that fall within the PCR
09:24:13	4 structure.	09:27:22	4 because the use of PCR in the process or --
09:24:15	5 So Applied Biosystems, what was your role at	09:27:25	5 A. Generally, yes. I'm trying to remember where
09:24:19	6 Applied Biosystems? How would you describe your job and	09:27:30	6 that department was. Yeah, I mean, the technology and
09:24:22	7 if it changed over time?	09:27:36	7 the administration of that technology would have been in
09:24:24	8 A. Sure. I was initially hired as director of	09:27:38	8 that same division.
09:24:28	9 licensing, I believe, licensing, where I was hired to be	09:27:41	9 Q. Okay.
09:24:32	10 part of the licensing department. There was an	09:27:41	10 A. But the products would have been in a
09:24:36	11 intention that I would roll out a new licensing program	09:27:43	11 different division at the time of the merger.
09:24:40	12 with regard to Roche IP, Promega being one of those	09:27:46	12 Q. Oh, and then what happened after the merger?
09:24:46	13 licensees.	09:27:49	13 A. Sorry?
09:24:47	14 Shortly after I joined Applied Biosystems, the	09:27:50	14 Q. You distinguished between the pre- and
09:24:50	15 gentleman that hired me retired and I was fortunate	09:27:53	15 post-merger, and I appreciate your distinguishing
09:24:52	16 enough to get his role and I was running the licensing	09:27:55	16 between them.
09:24:58	17 department. That was the same role that I had pretty	09:27:57	17 I'm trying to figure out where you have -- you
09:25:00	18 much through the end -- through the merger.	09:27:58	18 have the licensing or sublicensing or process of STR,
09:25:10	19 Q. Yeah, up till then.	09:28:05	19 the products that come from it, did any of that fall
09:25:10	20 So when you talk about the Roche IP, it would	09:28:08	20 within your bailiwick within the company?
09:25:13	21 be the PCR portfolio?	09:28:14	21 MS. JOHNSON: Post-merger.
09:25:15	22 A. The PCR portfolio.	09:28:16	22 MR. TROUPIS: Post-merger, thank you.
09:25:17	23 Q. Did Applied Biosystems have other portfolios	09:28:18	23 THE WITNESS: Post-merger, the legacy license
09:25:19	24 that other people would package from a patent	09:28:21	24 that I had managed, I would continue to manage, but
09:25:22	25 perspective or a licensing perspective?	09:28:25	25 maybe new support typically would be handled by other
Page 14		Page 16	
09:25:26	1 A. Applied Biosystems had other patent portfolio	09:28:29	1 people. If any had arisen, and I don't know that any
09:25:28	2 that was licensed. For the most part, it was in my	09:28:43	2 actually arose during that time period.
09:25:32	3 department.	09:28:45	3 MR. TROUPIS: Q. I'll come back to that in
09:25:32	4 Q. That's what I was after. You were overseeing	09:28:46	4 just a second. Again, it's difficult from the outside
09:25:35	5 a variety of different licensing --	09:28:50	5 to know which falls in which area. So I apologize if my
09:25:39	6 A. Correct. Mostly, though, it was PCR related	09:28:54	6 questions are too basic.
09:25:41	7 that we spent most of our time on licensing, either	09:28:57	7 How big was Invitrogen and how big was
09:25:49	8 instrument, chemistry, or methods.	09:29:00	8 Applied Biosystems at the time of the merger?
09:26:00	9 Q. With the merger with Invitrogen, then what	09:29:02	9 A. In terms of?
09:26:06	10 became your role after -- at that point, you said it	09:29:03	10 Q. Total sales.
09:26:09	11 didn't change until then, but did it change after that?	09:29:06	11 A. I believe that Applied Biosystems was on the
09:26:12	12 A. It did somewhat. The new corporation was a	09:29:11	12 order of \$2.4 billion a year in sales, plus or minus.
09:26:18	13 mixture of the two. It was a significant merger in that	09:29:17	13 And I believe Invitrogen was close to 1.2 billion.
09:26:22	14 Applied Biosystems was about twice the size of	09:29:22	14 Together about three and a half, 3.6 billion in sales,
09:26:25	15 Invitrogen at the time. And so there was -- with the	09:29:26	15 somewhere in that range.
09:26:30	16 merger, there was a divisional structure. I believe it	09:29:28	16 Q. Has it grown since that time?
09:26:33	17 was created. I don't know how Invitrogen was structured	09:29:31	17 A. I believe so, but I don't know the current
09:26:36	18 prior to the merger. And there was one division,	09:29:32	18 number. I know that we've been aspiring towards
09:26:39	19 Molecular Biology Systems, MBS, that was formed that was	09:29:37	19 4 billion. I don't recall if we've made it to that
09:26:45	20 about half of the company.	09:29:40	20 number.
09:26:46	21 And I was in charge of the out-licensing and	09:29:41	21 Q. The original PCR license, and then there were
09:26:51	22 business development functions for that division.	09:29:45	22 three licenses, and we'll get to those in just a little
09:26:58	23 Q. What would fall under molecular --	09:29:48	23 bit, that Promega was involved in, those would be
09:27:01	24 A. Largely PCR, largely PCR. A couple of other	09:29:51	24 considered legacy licenses and also PCR licenses, so
09:27:06	25 small technologies. PNA, a chemistry technology, for	09:29:55	25 they would continue to fall within your area of the

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09:29:58	1	company?	09:32:26	1	merger. As such, the licenses that were relevant to the
09:29:59	2	MS. JOHNSON: Objection. Compound.	09:32:31	2	business that I was associated with, Molecular Biology
09:30:00	3	If you understand.	09:32:35	3	Systems, were under my group's management. Licenses
09:30:02	4	THE WITNESS: If we could maybe just separate	09:32:40	4	that applied to the other divisions, I believe this
09:30:04	5	that out again.	09:32:44	5	division would have been called applied markets, were
09:30:05	6	MR. TROUPIS: Q. Sure, sure.	09:32:47	6	managed by those divisions.
09:30:06	7	There's a PCR license.	09:32:55	7	The revenue from the licenses that I managed
09:30:08	8	A. Right.	09:32:58	8	would go to my division. The revenue or expense from
09:30:10	9	Q. And then there's -- there's a second -- then	09:33:02	9	the licenses that the other divisions would manage would
09:30:14	10	there is the cross-license involving the various	09:33:05	10	go to their divisions.
09:30:18	11	technologies. Do they fall in separate areas?	09:33:06	11	Q. Their applied markets division?
09:30:21	12	A. Sure. So the PCR license would -- at the time	09:33:08	12	A. Applied markets.
09:30:24	13	of the merger, would have fallen into my department very	09:33:09	13	Q. Give me an example of an applied market.
09:30:27	14	clearly. There wouldn't have been any confusion on	09:33:13	14	A. HID is an applied market. Environmental
09:30:31	15	that. The cross-license -- and this is slightly	09:33:16	15	testing is an applied marketing. Food testing is an
09:30:34	16	different than what I said a moment ago. This is a	09:33:19	16	applied market. The distinction is applied over basic
09:30:37	17	clarification, if you will.	09:33:25	17	research, typically.
09:30:39	18	Q. Sure.	09:33:29	18	Q. So the 2006 cross-license, the revenue -- if
09:30:39	19	A. The cross-license would have been owned and	09:33:35	19	there was a check received for that from Promega, where
09:30:41	20	would have been operated by the department -- the part	09:33:41	20	would it go?
09:30:44	21	of the business selling products, STR products.	09:33:43	21	MS. JOHNSON: Pre-merger and post-merger?
09:30:49	22	Typically the division I was in -- I don't	09:33:46	22	MR. TROUPIS: Q. I think I'm trying to
09:30:52	23	know if they had any STR products, but certainly not any	09:33:48	23	understand post-merger at this point.
09:30:55	24	major ones if any had fallen under that.	09:33:50	24	A. Oh, post-merger.
09:30:58	25	And in the same way -- I'm sorry, at the same	09:33:51	25	Q. Yeah, let's stick with post-merger.
		Page 18			Page 20
09:31:00	1	time, if questions had arisen, more than likely someone	09:33:54	1	A. Post-merger, if a check would come from
09:31:05	2	would have come and consulted with me, because I had	09:33:57	2	Promega for the cross-license, is that what --
09:31:08	3	been involved with the original license discussion. But	09:34:00	3	Q. Yes.
09:31:11	4	the license itself resided with the business that sold	09:34:01	4	A. That would have gone to the applied markets
09:31:15	5	the STR products.	09:34:03	5	division. Yeah, division was the structure they called
09:31:17	6	Q. Is that both pre- and post-merger? So	09:34:06	6	it.
09:31:25	7	cross-license existed in 2006 and then you have a merger	09:34:11	7	Q. And within the applied markets division, do
09:31:27	8	in 2008.	09:34:14	8	you know where it would have landed, HID or?
09:31:31	9	A. Right. Sorry, it's just that it's not a	09:34:18	9	A. I don't know that any checks actually arrived,
09:31:38	10	simple answer.	09:34:20	10	so it's a little harder.
09:31:39	11	Q. Please explain it as best you can.	09:34:22	11	Q. It's a hypothetical.
09:31:42	12	A. Sure. Pre-merger my function was more or less	09:34:24	12	Let's step over to the PCR and ask the same
09:31:44	13	what you might consider corporate. My department was	09:34:27	13	question. Where would that check, where would that go?
09:31:49	14	within the legal department and then in the corporate	09:34:34	14	A. So --
09:31:51	15	business development department, corporate functions. I	09:34:36	15	Q. Now, post-merger, so there's check written on
09:31:55	16	was not in a division or in a business. I was in the	09:34:39	16	the PCR license, where would that go?
09:31:58	17	corporate structure.	09:34:43	17	A. That would go to the MBS division, which is
09:31:59	18	And so all of these licenses fell under my	09:34:45	18	where I reported.
09:32:03	19	department. All of the out-licenses fell under my	09:34:53	19	Q. Now, who would write -- let's reverse the
09:32:08	20	department. People that reported to me collected the	09:34:55	20	equation of the 2006 license. Who would write the check
09:32:10	21	royalties, sent out the letters if the royalties didn't	09:35:00	21	for use of that license? So now it's an in-license to
09:32:13	22	come in. Other people reported to me, did the license	09:35:06	22	the company, where would that expense be, where would
09:32:16	23	negotiations or I did them myself.	09:35:12	23	that be expensed?
09:32:20	24	After the merger, I was in a business	09:35:15	24	A. I apologize, but you asked multiple questions
09:32:24	25	division, not in corporate, immediately after the	09:35:17	25	that were not the same.



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09:35:18	1	Q. I didn't mean to.	09:39:00	1	Q. Thank you for being complete.
09:35:21	2	On the 2006 license, there would be a check	09:39:03	2	And who was the supervisor that you took his
09:35:26	3	written. On the cross-license, on that license, if	09:39:06	3	place, her place?
09:35:29	4	there was a check written, who would write that check?	09:39:08	4	A. Robert DiFranco, Bob DiFranco.
09:35:35	5	A. The in-licensing department or finance, I	09:39:12	5	Q. When about did that occur?
09:35:38	6	believe, would write the check.	09:39:14	6	A. I believe it was June of 2005.
09:35:41	7	Q. And which division would it be then applied	09:39:23	7	Q. Who did you report to as senior director of
09:35:43	8	to?	09:39:28	8	licensing?
09:35:43	9	A. The charge would on a product-by-product	09:39:31	9	A. In my first two and a half years at
09:35:46	10	basis. So each product that incurs a royalty we track	09:39:34	10	Applied Biosystems, I had seven different managers.
09:35:52	11	to the product. And so the department that gets the	09:39:38	11	Q. Well, that had to be a joy.
09:35:55	12	credit for the sale, gets the cost for the royalty.	09:39:41	12	And that was your only direct reporting,
09:36:04	13	Q. Now, let's ask about the other license that	09:39:44	13	straight-line reporting?
09:36:08	14	came into the company with the merger, which is the	09:39:46	14	A. My straight line, I had seven. You wish me to
09:36:11	15	license that IP Holdings had, that originated with	09:39:51	15	go through each of them, or were you looking for a
09:36:15	16	Research Genetics and Promega.	09:39:55	16	specific one?
09:36:19	17	A. Could you explain.	09:39:55	17	Q. I didn't know you had seven until just now.
09:36:20	18	Q. Sure.	09:39:59	18	A. I think it was seven. I stopped counting.
09:36:20	19	In 1996 there was a license between Research	09:40:03	19	Q. Who was the last one?
09:36:23	20	Genetics and Promega that was held by Invitrogen and	09:40:06	20	A. The last one?
09:36:29	21	then was transferred to IP Holdings at some point. With	09:40:07	21	Q. The last person to whom you reported prior to
09:36:35	22	the merger, that license came into this merged	09:40:09	22	the merger.
09:36:41	23	Life Technologies.	09:40:11	23	A. James --
09:36:42	24	How was that license handled financially	09:40:11	24	Q. Or acquisition, whatever you call it.
09:36:46	25	within the company? Who had responsibility for it?	09:40:14	25	A. James Meriwether.
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09:36:51	1	MS. JOHNSON: Objection. Lack of foundation.	09:40:21	1	Q. Why don't you go either forward or backward
09:36:56	2	THE WITNESS: I'm thinking. So with the	09:40:24	2	and give me the names. I may recognize them and it may
09:37:03	3	merger -- I'm just repeating to make sure I	09:40:28	3	trigger --
09:37:06	4	understood -- with the merger, the license,	09:40:29	4	A. It's easier for me to think of it forward
09:37:08	5	cross-license between ResGen, as I think of it, IP	09:40:31	5	rather than backward.
09:37:14	6	Holdings, whoever they were, and Promega. I'm a little	09:40:32	6	Q. That's fine.
09:37:20	7	reluctant to answer because I'm not certain. I'd rather	09:40:33	7	A. I was originally hired by Bob DiFranco. When
09:37:24	8	not speculate.	09:40:37	8	he retired, I reported to Paul Grossman. When Paul
09:37:30	9	MR. TROUPIS: Q. How are -- who decided what	09:40:43	9	changed roles within the company, I then reported, I
09:37:36	10	would happen to licenses post-merger that came from	09:40:49	10	think, for a while to Mark Stevenson. And then to --
09:37:42	11	Invitrogen?	09:40:58	11	I'm probably -- Jeff Frazier, Paul Grossman again, and
09:37:48	12	A. I probably don't fully understand the answer	09:41:03	12	then Jim Meriwether. I think there was somebody in
09:37:51	13	to that question. I understand the question, I believe.	09:41:06	13	between, but I'm not thinking of their name.
09:37:54	14	If you'll recall, in the merger	09:41:09	14	So DiFranco, Grossman, Stevenson, Frazier,
09:37:57	15	Applied Biosystems was acquired by Invitrogen, and so I	09:41:14	15	Grossman, Meriwether. That's six, and I'm thinking
09:38:04	16	believe the answer to your question was determined	09:41:18	16	there's a seventh that I'm not coming up with at the
09:38:07	17	pre-merger to some extent, and I would not know exactly	09:41:21	17	moment.
09:38:10	18	the process.	09:41:21	18	Q. So it's a bit like two marriages. You married
09:38:34	19	Q. Let me focus on the corporate structure during	09:41:26	19	Paul Grossman earlier, then he came back again.
09:38:37	20	the time period -- when you joined Applied Biosystems	09:41:29	20	MS. JOHNSON: He's suggesting you're Elizabeth
09:38:42	21	until the merger itself. You mentioned that you were	09:41:31	21	Taylor.
09:38:45	22	the director of a licensing department; is that right?	09:41:33	22	MR. TROUPIS: Q. At the time of the entry
09:38:53	23	I think I said that right.	09:41:38	23	into the 2006 cross-license with Promega, I recall that
09:38:54	24	A. Yes. Just to clarify, at one point I was	09:41:42	24	Paul Grossman was involved in those negotiations. Was
09:38:56	25	promoted to senior director, just to be complete.	09:41:45	25	that a time when you were directly reporting to them?

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09:41:49	1 A. I think so, yes. And if not, he was involved	09:44:47	1 Q. And do you know anything about the process by
09:41:53	2 in the negotiations.	09:44:49	2 which it was decided how or which department they would
09:42:18	3 Q. Did Applied Biosystems produce any products	09:44:53	3 go to?
09:42:21	4 between -- in that time period, from 2006 until the	09:44:54	4 A. No, I don't think I have any insight into that
09:42:26	5 merger, that dealt with human identity, as it would	09:44:57	5 process.
09:42:33	6 later be known, as the human identity group, did they	09:45:13	6 Q. Within Applied Biosystems, who would have had
09:42:37	7 produce or sell any products into that segment of the	09:45:16	7 responsibility for those products? What structural part
09:42:40	8 marketplace?	09:45:18	8 of the company was responsible for the production and
09:42:42	9 A. To my knowledge, yes.	09:45:20	9 sale of those products? Those products being these
09:42:43	10 Q. And what were they, if you know?	09:45:26	10 human identity products we've just mentioned.
09:42:46	11 A. I could throw out a name or two, but for the	09:45:31	11 A. So making sure I understand the question,
09:42:50	12 HIT field, you said --	09:45:34	12 under Applied Biosystems prior to the merger, two
09:42:53	13 Q. Yes.	09:45:38	13 products that I can think of the names of would have
09:42:54	14 A. -- for human identification.	09:45:42	14 been produced and sold under the direction of the -- we
09:42:54	15 I was not well familiar with them, but an	09:45:51	15 had an applied markets group as well that we -- that
09:42:59	16 example would be Profiler Identifier.	09:45:56	16 encompassed a similar scope as the applied markets
09:43:02	17 Q. Those were products within Applied Biosystems	09:46:01	17 post-merger.
09:43:04	18 during that time. I want to flip it over.	09:46:01	18 Q. So the products were in these applied markets
09:43:10	19 Then when the merger took place -- I keep	09:46:05	19 and the licensing was a separate and distinct area of
09:43:14	20 calling it a "merger," and forgive me if it's something	09:46:11	20 Applied Biosystems?
09:43:17	21 else -- but those products then were moved into this	09:46:12	21 A. Prior to the merger and Applied Biosystems,
09:43:21	22 human identity group that you mentioned, HID group?	09:46:16	22 the licensing tended to be more of a corporate function.
09:43:25	23 A. I don't know if they call themselves HID. It	09:46:20	23 And so in that sense, it was distinct from the business
09:43:28	24 was applied markets division.	09:46:26	24 of manufacturing and selling and so forth.
09:43:30	25 Q. Applied markets division. Then you described	09:46:31	25 Q. If someone needed a license for a product that
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09:43:32	1 one of them as the HID?	09:46:34	1 they were producing at Applied Biosystems, how would
09:43:34	2 A. Informally I -- informally HID. I don't know	09:46:38	2 they go about obtaining that license within the
09:43:37	3 their formal title.	09:46:42	3 corporate structure? By that I mean, did they have to
09:43:38	4 Q. And I'm not holding you to the formal title.	09:46:45	4 go to corporate, or were these negotiated within the
09:43:41	5 I was trying to find the kinds of products that would	09:46:49	5 separate product areas or supplied market areas?
09:43:45	6 have now become a part of that applied markets group	09:46:55	6 A. I believe there was no set mechanism for that.
09:43:51	7 within the new company. That was -- the purpose of my	09:47:04	7 Q. So there were times when it would come from
09:43:54	8 question, you mentioned a product, Profiler, similar to	09:47:08	8 corporate and times that it would come through the
09:43:57	9 those, that's what would have happened, those products	09:47:12	9 applied market's groups; is that true?
09:44:02	10 went there, went to these various divisions?	09:47:14	10 A. If the applied markets group needed --
09:44:06	11 MS. JOHNSON: Objection. Vague and ambiguous.	09:47:16	11 believed that they needed an in-license, it might -- and
09:44:08	12 MR. TROUPIS: Q. Not trying to be vague or	09:47:23	12 this is a little bit of a speculation, because I can't
09:44:09	13 ambiguous. I really am just trying to understand where	09:47:26	13 think of an example specifically, but it might have come
09:44:13	14 the products land.	09:47:32	14 from them or other staff, such as myself, might have
09:44:14	15 A. If you could just restate the question.	09:47:38	15 been involved. And as you know, in the cross-license
09:44:16	16 Q. Sure.	09:47:41	16 between Promega and Applied Biosystems, I was involved.
09:44:16	17 We have a group of human identity products or	09:47:48	17 Q. And I didn't mean to be obtuse. I was simply
09:44:19	18 forensic products or whatever you want to call them,	09:47:52	18 trying to understand how the process worked with
09:44:22	19 like Profiler. We've been talking about the licensing.	09:47:56	19 products for which a license is required and patents
09:44:26	20 Now I'm talking about the products themselves. And I	09:48:00	20 that may have been in your own portfolio for which you
09:44:29	21 was asking, did the products move into these new applied	09:48:03	21 were licensing out.
09:44:35	22 markets groups within the new company?	09:48:07	22 Maybe it would be easier if I asked it a
09:44:39	23 A. With the caveat I'm not an expert, but to my	09:48:11	23 little different.
09:44:42	24 knowledge, those products would have gone to the applied	09:48:12	24 Define for us what you mean by in-licensing
09:44:45	25 markets division.	09:48:14	25 and out-licensing.



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09:48:18	1 A. By "in-licensing" I mean the acquisition of a	09:51:55	1 question is ambiguous. If I could --
09:48:22	2 license for the use by the company I work for. By	09:51:59	2 Q. Please rephrase it or tell me why it's
09:48:26	3 "out-licensing" I mean a license granted under patent	09:52:02	3 ambiguous.
09:48:32	4 rights owned or controlled by my company for the benefit	09:52:03	4 A. There had to have been such a valuation.
09:48:35	5 of a different company.	09:52:04	5 People don't --
09:49:10	6 Q. Again, staying with the corporate structure,	09:52:07	6 Q. A fair statement.
09:49:11	7 at the time, were you involved -- at the time of the	09:52:08	7 A. But I had no knowledge or participation of
09:49:15	8 merger, were you involved in the due diligence process	09:52:11	8 what went on to make those valuations.
09:49:20	9 as between the companies predating the actual merger?	09:52:19	9 Q. Is there a document that you've ever seen or
09:49:28	10 Do you know what I mean by "due diligence"?	09:52:21	10 know of that does attribute those values to licenses?
09:49:30	11 A. I believe I have a good approximation. I was	09:52:26	11 A. Again, like my last answer, that document must
09:49:33	12 just checking mentally whether you could possibly be	09:52:32	12 exist, but I do not have -- have not seen it, I don't
09:49:37	13 referring to any other merger.	09:52:37	13 know anything personally about it.
09:49:39	14 Q. I was only referring to the	09:52:39	14 Q. Great, that's fine.
09:49:42	15 Invitrogen-Applied Biosystems merger.	09:52:56	15 (Whereupon, Exhibit 1 was marked for
09:49:44	16 A. I did not have any role in any form of due	09:52:56	16 identification.)
09:49:47	17 diligence, witting form, at any rate. People may have	09:53:24	17 MR. TROUPIS: Q. I'm showing you what has
09:49:54	18 asked me questions where I contributed, but I was not	09:53:26	18 been marked Exhibit 1. And this is a -- I will
09:49:57	19 part of the process.	09:53:31	19 represent that this came off the website for
09:49:58	20 Q. Who was overseeing that process, if you	09:53:37	20 Life Technologies and is a press release related to 2009
09:49:59	21 recall?	09:53:41	21 results. What's not important are the -- to go through
09:50:01	22 A. I wasn't part of that process. I was unaware	09:53:46	22 this in any way other than to ask the question on how
09:50:05	23 of that process.	09:53:53	23 the company, that is, Life Technologies, reports its
09:50:07	24 Q. When did you first learn of the merger taking	09:53:58	24 income, expenses, and profitability.
09:50:11	25 place?	09:54:05	25 Our understanding, and this press release
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09:50:14	1 A. When it was publicly announced. I think that	09:54:09	1 suggests this, is that once the company is merged,
09:50:18	2 was in June of 2008.	09:54:15	2 everything is reported, all income, all expenses, are
09:50:28	3 Q. What was your role, then, once it had been	09:54:18	3 consolidated at Life Technologies. And that's the
09:50:31	4 announced?	09:54:24	4 reason for the exhibit, and that's my question.
09:50:32	5 A. I was senior director of licensing.	09:54:27	5 Are, to your knowledge, all income and
09:50:35	6 Q. And as senior director of licensing, did you	09:54:30	6 expenses reported on a consolidated basis by
09:50:37	7 interact with people at Invitrogen prior to the formal	09:54:34	7 Life Technologies from the various divisions and other
09:50:42	8 merger taking place?	09:54:36	8 corporate entities?
09:50:47	9 A. I had engaged in an out-license to Invitrogen	09:54:41	9 A. I don't believe I'm qualified to answer that
09:50:50	10 in 2005, an occasional conversation about that license,	09:54:43	10 question.
09:50:55	11 other matters of that type related to in-licensing or	09:54:45	11 Q. Who would be qualified to answer that
09:50:59	12 out-licensing between the companies.	09:54:47	12 question?
09:51:04	13 Q. Once the -- there's a process, then, that	09:54:47	13 A. That sounds like something I would address to
09:51:07	14 takes place after the announcement but before the actual	09:54:50	14 the accounting department.
09:51:14	15 merger takes place in a normal acquisition process that	09:55:05	15 Q. Do you have any role in the preparation of
09:51:18	16 would presumably involve a review of the licensing	09:55:08	16 financial statements for Life Technologies?
09:51:23	17 agreements for which you were proceeding.	09:55:10	17 A. No, not in the preparation. Obviously, I
09:51:25	18 Was there such a process?	09:55:13	18 contribute whatever I contribute, but I don't have any
09:51:28	19 A. I don't know the answer to that. I agree with	09:55:15	19 formal role.
09:51:33	20 you the sensibility of the statement, but I was not	09:55:40	20 Q. Let me ask about some people in the company
09:51:37	21 involved in any way.	09:55:44	21 and what their roles are. You've mentioned what your
09:51:38	22 Q. Was there any -- prior to the merger, was	09:55:45	22 role is. What is the present role or position of Mark
09:51:40	23 there any valuation of licenses, to your knowledge? Any	09:55:47	23 Stevenson?
09:51:46	24 value attributed or valuation of them?	09:55:50	24 A. Mark is the chief operating officer of the
09:51:52	25 A. I'm hesitating, because to some extent your	09:55:53	25 company.

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09:56:04	1 Q. In your own words, how would you define his	09:59:02	1 Q. I apologize. Say that again. He's the
09:56:08	2 role as chief operating officer?	09:59:05	2 director of licensing?
09:56:18	3 A. As chief operating officer, he's a senior	09:59:06	3 A. Licensing and OEM -- capital O, capital E,
09:56:21	4 member of the executive team. He's one of the people	09:59:12	4 capital M -- business development, I guess.
09:56:24	5 that -- you know, the handful of people that would be	09:59:14	5 OEM is "original equipment manufacturer."
09:56:26	6 running the company.	09:59:18	6 Q. Right, that's what I was trying to figure
09:56:29	7 Q. Relative to Mr. Lucere, what would his role	09:59:21	7 out -- I apologize. I was trying to think through what
09:56:33	8 be?	09:59:27	8 would OEM products be or licensing for
09:56:36	9 A. I would have to say that you embarrass me by	09:59:33	9 Life Technologies, again some examples.
09:56:38	10 that question. I'm not always clear on that	09:59:37	10 A. Sure. An example might if a given company is
09:56:41	11 distinction.	09:59:42	11 selling an integrated PCR solution but they're not
09:56:41	12 Q. I asked it because the outside world may not	09:59:47	12 manufacturing their own instrument but they wish to have
09:56:44	13 either.	09:59:51	13 one branded under their brand, we have an occasional
09:56:45	14 A. It does not directly impact my role in the	09:59:54	14 deal like that where we'll manufacture for that
09:56:48	15 company, what those distinctions are, and so I don't	09:59:57	15 individual.
09:56:54	16 always pay a lot of attention.	09:59:57	16 Similarly, we have a lot of patented
09:57:00	17 Q. Who do you report to now? You have direct	10:00:00	17 technologies that we also -- we will enter into a
09:57:04	18 line --	10:00:05	18 license and supply agreement. And while some industries
09:57:04	19 A. I directly report to Nicholas Ecos, Nick Ecos,	10:00:09	19 might not call that strictly OEM, for the purposes of
09:57:10	20 E-C-O-S. I think it's Nicholas. I just know him as	10:00:13	20 ourselves, we refer to that as OEM.
09:57:19	21 Nick, I should say.	10:00:15	21 Q. And that's the reason I asked. It was because
09:57:23	22 Q. Do you have non-direct line reporting	10:00:18	22 it covers of variety of things here.
09:57:25	23 responsibility to others?	10:00:21	23 A. Yes. It's a term that has different meanings.
09:57:26	24 A. Yes.	10:00:25	24 Q. I appreciate that.
09:57:27	25 Q. And who would those?	10:00:28	25 Lenny Clavin, what's his position and role
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09:57:29	1 A. Paul Grossman.	10:00:32	1 today in the company?
09:57:32	2 Q. No matter how hard you try, you can't get away	10:00:37	2 A. I don't know his precise title, but I think of
09:57:35	3 from Paul. What's Paul's role?	10:00:40	3 him as being the senior person -- senior person
09:57:38	4 A. Paul is the -- I guess the VP or senior VP of	10:00:43	4 particularly responsible for human identification and
09:57:43	5 business development, corporate development.	10:00:47	5 STR-type products.
09:57:48	6 Q. And can you describe what that role entails.	10:01:01	6 Q. Do you know who Dave Oehler is, O-E-H-L-E-R?
09:57:50	7 And, again, understanding from your point of view.	10:01:07	7 A. The name sounds almost familiar, but I don't
09:57:54	8 A. Sure. Hopefully, I understand that a little	10:01:08	8 know who he is.
09:57:57	9 better.	10:01:33	9 Q. Elan, I could never pronounce his last name,
09:57:58	10 Paul is again one of the handful of people	10:01:38	10 but you know who I'm referring to, Elan Foistvagn?
09:58:01	11 that run the company, the senior executive team. His	10:01:45	11 A. Foistvagn.
09:58:04	12 role this year is to be responsible for out-licensing,	10:01:46	12 Q. Does he still work with you, or where is he
09:58:08	13 in-licensing, mergers, major deals with other companies,	10:01:50	13 these days?
09:58:15	14 and shared responsibility for perhaps legal settlements	10:01:50	14 A. He's still at Life Technologies. He's still
09:58:19	15 if they've impacted business decisions.	10:01:53	15 an attorney. He's in the legal department. I don't
09:58:26	16 Q. And he presumably reports to either Mark	10:01:56	16 know the precise point you're asking.
09:58:30	17 Stevenson and Greg Lucere or both of them?	10:01:59	17 Q. I was just trying to find him again. He was
09:58:35	18 A. It's my understanding that he reports to Greg,	10:02:03	18 involved originally in the negotiation of the 2006
09:58:38	19 Greg Lucere.	10:02:05	19 agreement.
09:58:39	20 Q. What is Nick's role? What is his title?	10:02:05	20 A. Yes, he was. And he still works for the same
09:58:43	21 A. I don't know.	10:02:08	21 company.
09:58:45	22 Q. What does he do?	10:02:08	22 Q. And he works in the legal department?
09:58:48	23 A. I think Nick's role is to be the head of a	10:02:11	23 A. Yes.
09:58:51	24 department we call licensing and OEM, often abbreviated	10:02:17	24 Q. What is your interaction with the legal
09:58:55	25 with the acronym of LOEM.	10:02:20	25 department? Are you considered within legal now, or do

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10:02:23	1	you have -- are they just a branch to which you would	10:05:48	1	patent, where would that come? Would that come again
10:02:27	2	seek services?	10:05:51	2	through your department, or would it go through a
10:02:29	3	A. More the latter. I'm not in the legal	10:05:53	3	foreign subsidiary?
10:02:32	4	department. In negotiating deals, I work closely with	10:05:56	4	A. And just to clarify, you mean today?
10:02:37	5	the legal department and lawyers.	10:05:58	5	Q. Today, yes.
10:02:40	6	Q. My assumption was that.	10:05:59	6	A. We have what we call an in-licensing
10:02:58	7	Do you recognize a company called Invitrogen	10:06:03	7	department.
10:03:04	8	IP Holdings, that's the name of that company?	10:06:04	8	Q. And who heads that?
10:03:07	9	A. I've heard the term.	10:06:05	9	A. Traci Libby.
10:03:08	10	Q. And what do you know about them?	10:06:08	10	Q. And how long has that existed, in-licensing?
10:03:10	11	A. All that I really know is it's one of the	10:06:14	11	A. Pre-merger.
10:03:13	12	corporate entities in Life Technologies today. Or I	10:06:16	12	Q. Specific time period or just some type of
10:03:17	13	believe it is, I should say. I've heard the term in	10:06:19	13	merger, if you remember?
10:03:19	14	that context. I don't have any specific knowledge of	10:06:21	14	A. It's an Invitrogen structure. I don't know
10:03:22	15	it.	10:06:25	15	how long they've done it.
10:03:32	16	Q. Life Technologies has a fair number of foreign	10:06:28	16	Q. So Traci came over from the Invitrogen side?
10:03:34	17	companies revealed in its securities statements. Do you	10:06:32	17	A. Yes.
10:03:44	18	work with those companies in licensing, that is, foreign	10:06:34	18	Q. Were there in-licenses to Applied Biosystems
10:03:48	19	subsidiaries or foreign-affiliated companies of	10:06:40	19	that have since become her responsibility at
10:03:52	20	Life Technologies?	10:06:43	20	post-merger?
10:03:57	21	A. I'm not sure if I understand how to answer	10:06:44	21	A. Yes.
10:03:59	22	that question.	10:06:45	22	Q. Any of the -- what about product? And I said
10:04:02	23	Q. Let me say it a little different.	10:06:53	23	there were three parts: Out-licensing, in-licensing,
10:04:05	24	You're involved with licensing. Is that	10:06:58	24	and products. If someone wanted to license a particular
10:04:10	25	licensing strictly onshore licensing, North American,	10:07:04	25	product that they were selling in a foreign country,
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10:04:14	1	U.S., or does it include foreign subsidiaries of	10:07:08	1	would that follow the same process? It would be
10:04:17	2	Life Technologies?	10:07:13	2	considered part of an out-license or part of an
10:04:24	3	A. I'm still a little perplexed by the question.	10:07:17	3	in-license?
10:04:28	4	I'm not trying to be difficult. On the one hand, you're	10:07:18	4	A. I don't understand what you mean by "license a
10:04:32	5	asking is it onshore or offshore?	10:07:20	5	product."
10:04:35	6	Q. I'm trying to understand. Normally in	10:07:21	6	Q. Oftentimes someone will have a specific
10:04:37	7	licensing, because there would be different aspects of	10:07:24	7	product that they believe may or may not require a
10:04:39	8	it overseas as opposed to domestic, they might be	10:07:28	8	license. Where would their point of entry be into this
10:04:42	9	handled quite differently and by different people. So	10:07:31	9	company? Through the licensing group?
10:04:47	10	in terms of those licenses as they apply to foreign	10:07:35	10	A. So licensing a patent for a product?
10:04:51	11	patent portfolios or foreign products, does that flow	10:07:37	11	Q. Yes.
10:04:55	12	through you?	10:07:38	12	A. If someone wishes -- and I've lost track of
10:05:00	13	A. Again, I'm not trying to be difficult. I'm	10:07:42	13	which company you're referring to, but if someone within
10:05:02	14	not sure exactly how to answer that. You're asking	10:07:45	14	my company is interested in getting a license for a
10:05:10	15	about products, patents, and licenses?	10:07:48	15	product that my company sells, they would do that in
10:05:13	16	Q. Let's say there was an out-license. We'll	10:07:52	16	consultation with attorneys, of course, and then Traci
10:05:16	17	break it back to the three component parts, an	10:07:54	17	Libby's group would be responsible for getting the
10:05:19	18	out-license. If I wanted to out -- if a German company	10:07:59	18	in-license, typically. There's always exceptions.
10:05:25	19	came to you seeking a license, who would they talk to?	10:08:03	19	Q. And if it was a product -- if someone was
10:05:30	20	A. They would most likely end up with the	10:08:05	20	producing a product on the outside for which they needed
10:05:33	21	out-licensing department.	10:08:09	21	a license, that would come through your department as an
10:05:34	22	Q. Here in the United States?	10:08:12	22	out-license?
10:05:36	23	A. Here in the United States.	10:08:14	23	A. Nick's department.
10:05:41	24	Q. What about an in-license, where there was a	10:08:16	24	Q. Nick's department, to whom you answer?
10:05:44	25	need within the company for a patent, let's say a German	10:08:21	25	A. Yes.

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10:08:32	1	<b>Q.</b> If there is a determination by someone in the	10:12:12	1	THE WITNESS: Yes. I believe so. I'm trying
10:08:39	2	company that a product is being sold that violates one	10:12:16	2	to think of examples, but I can think of perhaps one
10:08:43	3	of your patents, a patent owned by Life Technologies,	10:12:19	3	example. And it would go through the same people. It
10:08:49	4	where would that go? Would it come to you? Would it go	10:12:22	4	would be entered into the legal database. Accounting
10:08:56	5	directly to legal?	10:12:25	5	would be made aware of it.
10:09:00	6	<b>A.</b> It's hard to answer that as a hypothetical.	10:12:27	6	There was a group that was called royalty
10:09:02	7	Multiple patents are possible.	10:12:29	7	accounting, or something similar to that, when the
10:09:05	8	<b>Q.</b> And I expect that there were multiple patents.	10:12:32	8	quarterly reports or semi-annual, whatever, came in,
10:09:11	9	There's no specific way in which a patent	10:12:35	9	they would receive reports, check it against the
10:09:19	10	violation is addressed, there's no specific protocol?	10:12:38	10	license, to a greater or lesser extent, depending upon
10:09:25	11	Is that a fair statement?	10:12:41	11	their skill, and deposit the money then into the
10:09:29	12	<b>A.</b> An allegation of another company's product	10:12:44	12	accounting department.
10:09:32	13	violating one of our patents?	10:12:47	13	<b>MR. TROUPIS:</b> <b>Q.</b> Now, same time period for
10:09:33	14	<b>Q.</b> Yes.	10:12:50	14	in-licensing, so would it be essentially the same
10:09:34	15	<b>A.</b> I'm not aware of a specific protocol.	10:12:53	15	procedure or something different?
10:10:10	16	<b>Q.</b> In the 2006 -- I have to do pre-merger and	10:12:59	16	<b>A.</b> I'm thinking of in-licenses, I mean the
10:10:13	17	post-merger, so I apologize, and if sometimes I'm not	10:13:02	17	cross-license with Promega would be --
10:10:17	18	clear, please -- normally I'm talking about the present,	10:13:05	18	<b>Q.</b> That's exactly right.
10:10:20	19	but in this instance, I want to talk about the period	10:13:11	19	<b>A.</b> -- in a similar way would be entered into the
10:10:24	20	from 2006 until the merger took place.	10:13:14	20	legal database. There would be typically a summary made
10:10:27	21	Once a license was entered into by you,	10:13:18	21	of it. I don't know if every time that was done. And
10:10:32	22	generally, how were the terms then communicated to	10:13:22	22	then the process would be a little bit different,
10:10:38	23	others within the company?	10:13:24	23	because it would need to be tied to our product sales
10:10:40	24	And I can give you more specific. We're all	10:13:29	24	where we would need to be processing data every quarter
10:10:45	25	well aware of the role you described a minute ago in the	10:13:36	25	and paying appropriately.
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10:10:48	1	PCR, that there were a lot of negotiations with a lot of	10:13:38	1	<b>Q.</b> Can you describe that process, if there was a
10:10:52	2	different companies during that time period. Once you	10:13:40	2	standard process.
10:10:55	3	had reached an agreement, what happened next within this	10:13:46	3	<b>A.</b> At that time period, there was a database kept
10:10:59	4	company, within Applied Biosystems?	10:13:50	4	of products and royalty obligations, and then at the end
10:11:01	5	<b>A.</b> So an out-license --	10:13:54	5	of each quarter, that database would be tested against
10:11:05	6	<b>Q.</b> An out-license has been entered into, and I've	10:13:57	6	the quarterly sales and the royalty report would be
10:11:08	7	used PCR as example.	10:14:00	7	generated. And that's about the level of my
10:11:11	8	<b>A.</b> So I'm reflecting back five years ago.	10:14:04	8	understanding.
10:11:15	9	The agreement would be executed, signed, and	10:14:05	9	<b>Q.</b> That's -- let's fast-forward to the
10:11:18	10	be entered into the legal database. And there was a	10:14:09	10	post-merger time period. Would an out-license be
10:11:23	11	group who would get the license, enter it, enter in key	10:14:14	11	similarly handled, as you just described, or have there
10:11:29	12	terms. A copy would be given to the accounting	10:14:19	12	been changes?
10:11:34	13	department, also, so that they were aware of it. I	10:14:26	13	<b>A.</b> There have been lots of changes in everything
10:11:38	14	don't know if there was an SOP that was absolutely	10:14:29	14	since the merger. So trying to think of the last time I
10:11:43	15	followed, but that was the general procedure.	10:14:36	15	wrote an out-license. There is -- the Traci Libby that
10:11:46	16	<b>Q.</b> What's an SOP?	10:14:42	16	I referred to, her group would manage -- would receive
10:11:48	17	<b>A.</b> Sorry, standard operating -- a document that	10:14:45	17	the new out-license and process it through the system.
10:11:49	18	says step one, step two, step three. I don't recall	10:14:50	18	I don't know precisely. There were some of
10:11:54	19	there being a formal process, but there was a process	10:14:52	19	the same people involved, some of the same processes,
10:11:58	20	that was followed.	10:14:56	20	but I don't know their procedure so well, because I'm
10:11:59	21	<b>Q.</b> Now, would that have been the same if it was	10:14:59	21	not as directly involved with it.
10:12:02	22	not a PCR license but a license to other patent	10:15:01	22	<b>Q.</b> How are the terms of those licenses
10:12:07	23	portfolios?	10:15:04	23	communicated? Is there a process by which the terms are
10:12:08	24	<b>MS. JOHNSON:</b> Same period of time?	10:15:07	24	communicated to somebody other than Traci?
10:12:09	25	<b>MR. TROUPIS:</b> Same period of time, yes.	10:15:14	25	<b>A.</b> I don't know for sure. I'm not aware of a



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10:15:17	1	specific process at this time.	10:19:00	1	A. I don't understand.
10:15:19	2	Q. Okay. What about in-licensing as to	10:19:02	2	Q. Within a company with as many licenses as you
10:15:23	3	out-licensing? Same thing with regard to in-licensing,	10:19:05	3	have, it is possible that you would have somebody or
10:15:25	4	so now there has been an in-licensing of some patent or	10:19:13	4	some group that would from time to time check the
10:15:31	5	the like?	10:19:16	5	licenses for compliance, either on the outside or on the
10:15:32	6	A. I'm not knowledgeable of what we do with	10:19:21	6	inside? So that was what my question was about, someone
10:15:36	7	in-licenses today.	10:19:26	7	like a bank.
10:15:45	8	Q. Who would know?	10:19:29	8	A. Could you restate your question.
10:15:46	9	A. I think Traci Libby would be knowledgeable.	10:19:31	9	Q. Sure. In a banking context, there's someone
10:16:07	10	Q. Maybe I asked this before, but I don't recall	10:19:36	10	internally responsible for daily, often daily, certainly
10:16:10	11	the answer. Who negotiates the out-licenses today? You	10:19:41	11	regular, auditing of the ongoing operations of the bank.
10:16:17	12	mentioned that you aren't directly involved in the	10:19:47	12	Is there a similar function or person here at
10:16:21	13	negotiation of many of those. Who is involved in the	10:19:51	13	Life Technologies auditing license compliance?
10:16:24	14	negotiation of out-licenses?	10:19:57	14	A. Excuse me. We have a department called the
10:16:26	15	A. There are a number of people involved in the	10:20:06	15	internal audit department. I do not know if -- I'm
10:16:28	16	negotiation of out-licenses.	10:20:12	16	going to sneeze -- I don't know if they perform the same
10:16:31	17	Q. Who would be the primary people?	10:20:14	17	function as you describe in a bank. I'm not familiar
10:16:35	18	A. A list of the people, you know, primary is	10:20:19	18	with any group who systematically audits internal
10:16:43	19	kind of hard to answer, but Susan Cole is one person.	10:20:24	19	function on licenses.
10:16:47	20	Rolando Brawer is another. Paula Stonemetz is another.	10:20:35	20	My understanding of audit, just to clarify, is
10:16:55	21	Joshua Shinoff. Padna, whose last name I can't spell,	10:20:38	21	this: Whether they work for the same company or not,
10:17:04	22	Kolicu- or something, begins with a K.	10:20:41	22	they're external. Obviously, many people check their
10:17:09	23	Q. Kind of like --	10:20:45	23	own work, but I would not call that an audit.
10:17:12	24	A. Yeah. Maya Tanaka. There's probably 10	10:20:48	24	Q. No, nor would I. I was looking for that
10:17:16	25	others.	10:20:52	25	independent review process.
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10:17:16	1	Q. So it's a fairly large group. I would view	10:20:54	1	And, as far as you know, there's no such audit
10:17:19	2	that as fairly large.	10:20:57	2	process that goes on with regard to the licensings?
10:17:20	3	A. It's a fairly large group across the company,	10:21:00	3	A. Not to my knowledge.
10:17:24	4	and that's -- that goes beyond just PCR. That's	10:21:08	4	MR. TROUPIS: This is a good time to take a
10:17:27	5	company-wide.	10:21:10	5	break.
10:17:28	6	Q. That's why I asked it, and it wasn't intended	10:21:11	6	THE VIDEOGRAPHER: Going off the record. The
10:17:32	7	to be broad. I was just trying to understand corporate	10:21:12	7	time is 10:21 a.m.
10:17:35	8	process, as it were.	10:21:15	8	(Recess taken.)
10:17:37	9	So when there's an out-license, do those	10:51:35	9	THE VIDEOGRAPHER: We're back on the record.
10:17:41	10	people answer to you? You mentioned your position. Do	10:51:35	10	The time is 10:51 a.m.
10:17:44	11	those people report to you?	10:51:42	11	MR. TROUPIS: Q. Dr. Moehle, just -- I had a
10:17:45	12	A. No.	10:51:44	12	couple follow-up questions from before, before we move
10:17:46	13	Q. Who do they report to?	10:51:49	13	on to a new topic.
10:17:50	14	A. Either directly or indirectly to Nick Ecos.	10:51:51	14	At the end of the last session, I asked you
10:17:53	15	Q. Do you have any direct reports?	10:51:53	15	about the various audit procedures and you described
10:17:55	16	A. No.	10:51:59	16	what you described.
10:18:06	17	Q. And for in-licensing, the same group of people	10:52:01	17	Would your answers have been any different for
10:18:10	18	or is there a completely separate group?	10:52:04	18	the process pre-merger?
10:18:12	19	A. There's a completely separate group.	10:52:10	19	A. I'm thinking. Not remembering every word that
10:18:14	20	Q. And they answer to Traci Libby?	10:52:22	20	I said, essentially they would have been a similar type
10:18:17	21	A. Yes.	10:52:26	21	of process.
10:18:44	22	Q. Is there any sort of audit process for	10:52:27	22	Q. Thank you.
10:18:50	23	licenses, compliance with licenses, that's any different	10:52:34	23	And I'm reminded among -- again, we've been
10:18:52	24	than the normal auditing process of the company, the	10:52:37	24	trying to identify people. Who is in charge of the
10:18:56	25	normal CPA auditing?	10:52:41	25	applied markets division today? If there is a person,



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10:52:46	1 single person.	10:55:48	1 corporate -- is sort of a function that serves multiple
10:52:51	2 A. Early -- my answer is a little bit different	10:55:53	2 businesses. And the MBS group was a division of the
10:52:53	3 than your question, because I'm not sure -- the answer	10:55:56	3 company that was like a business, it was almost a mini
10:52:55	4 is I'm not sure, because early this year, we changed our	10:56:00	4 company.
10:52:59	5 divisional structure considerably and so I don't have	10:56:02	5 Q. Oh, okay. So it was a particular group of
10:53:02	6 the same appreciation for it.	10:56:06	6 products or services, MBS was?
10:53:05	7 Q. Okay. How did it change? You had described	10:56:10	7 A. MBS was, Molecular Biology Systems.
10:53:13	8 the applied markets division as having environmental	10:56:21	8 Q. So what would fall within the Molecular
10:53:20	9 markets, HID market, things like that. How is it	10:56:25	9 Biology Systems?
10:53:24	10 different? How did it change?	10:56:27	10 A. Largely PCR.
10:53:27	11 A. I know less how it changed in that division,	10:56:28	11 Q. Oh, okay.
10:53:31	12 because I was not in there, but the division structure	10:56:33	12 A. A few other things. Some of the legacy
10:53:34	13 that we had immediately after the merger changed.	10:56:36	13 Invitrogen catalog business would have been in Molecular
10:53:39	14 For instance, a year ago I was in the MBS	10:56:41	14 Biology Systems.
10:53:43	15 division, and I don't believe that there's currently an	10:56:47	15 Q. So now the function -- how would you describe
10:53:46	16 MBS division. I think they call them platforms. My	10:56:51	16 your job now?
10:53:51	17 function also moved to corporate. So my involvement	10:56:55	17 A. My job now is I'm in charge of strategic
10:53:54	18 with the business was different, because I was in the	10:57:00	18 settlements for the company.
10:53:58	19 corporate function now.	10:57:03	19 Q. What do you mean by "strategic settlements"?
10:54:01	20 Q. And I'll come back to that, because I thought	10:57:05	20 A. That's a phrase within the company, but I am
10:54:04	21 I understood the transition, but maybe I didn't. I want	10:57:08	21 engaged in settling problems with other companies:
10:54:07	22 to come back to that. Let me stay with the applied	10:57:13	22 litigation, threatened litigation, arbitration, the
10:54:10	23 markets.	10:57:19	23 problems have not worked themselves out.
10:54:10	24 Who would have responsibility for STR products	10:57:21	24 Q. It wouldn't -- it's not product-specific.
10:54:14	25 today? What division or what group? And I mean the	10:57:24	25 It's when these problems arise somewhere in the company.
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10:54:22	1 ones that you sell, the company sells.	10:57:27	1 you're called in to see if you can reach a resolution
10:54:26	2 A. I would say, I'm not a hundred percent	10:57:32	2 somehow?
10:54:29	3 certain, they may still call themselves applied markets.	10:57:33	3 A. Yes.
10:54:33	4 Q. And you mentioned that the structure changed	10:57:37	4 Q. But you retain the title, director of
10:54:35	5 from a year ago to today. How would that change	10:57:43	5 licensing? What's your title, your official title?
10:54:40	6 relative to products and how they're grouped?	10:57:49	6 Let me look at your card, I apologize. That's
10:54:46	7 A. There were multiple changes to how products	10:57:53	7 terrible, and I do apologize.
10:54:50	8 were grouped. And, again, with regard to the applied	10:57:54	8 Vice president of business development and
10:54:52	9 markets, I don't know as well how -- whether there	10:57:58	9 licensing now. That is the -- that's your official
10:54:55	10 was -- there could have been no change, for my	10:58:02	10 title?
10:54:59	11 knowledge, but I don't know.	10:58:04	11 A. Everything is complicated. That's not my
10:55:01	12 Q. Then -- and with regard to your position from	10:58:08	12 official title. Within the company, we have internal
10:55:04	13 2008 to now -- and again, if I'm treading the same	10:58:12	13 titles and some of those don't make sense in an external
10:55:08	14 ground, I apologize -- it is a difficult corporate	10:58:17	14 face. So on an external face, I'm VP of business
10:55:13	15 structure to understand. You were with MBS, that	10:58:23	15 development and licensing.
10:55:17	16 division, at the time -- immediately following the	10:58:24	16 Q. I would agree with that last statement, it's
10:55:20	17 merger; is that right?	10:58:27	17 difficult sometimes to get through it. So I do
10:55:20	18 A. Correct.	10:58:30	18 apologize. If I asked the question multiple times, it
10:55:21	19 Q. And then at some point, you -- the company	10:58:32	19 is because I don't understand it.
10:55:24	20 reorganized and you became a part of the corporate	10:58:40	20 That would explain more why you would report,
10:55:28	21 group; is that right?	10:58:43	21 then, to Paul Grossman as well as to Nick Ecos, that you
10:55:30	22 A. Correct.	10:58:48	22 have multiple hats, is that a fair statement, among
10:55:33	23 Q. And how are the corporate group and the MBS	10:58:52	23 these groups?
10:55:40	24 different? What's the difference between them?	10:58:55	24 A. I'm parsing. I wouldn't say necessarily
10:55:43	25 A. The corporate group is -- started to say is a	10:59:00	25 multiple hats, but my function is somewhat more

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10:59:03	1	applicable to Nick and/or Paul, depending on the	11:02:22	1	<b>Q.</b> Do you have any indirect knowledge?
10:59:07	2	particular project.	11:02:25	2	<b>A.</b> Any knowledge I have is through discussions
10:59:09	3	<b>Q.</b> Much better said, much better said.	11:02:27	3	with my attorneys.
10:59:42	4	And when did you take on this role of	11:02:30	4	<b>Q.</b> Is there a process within Life Technologies
10:59:44	5	overseeing strategic settlements?	11:02:32	5	today to communicate rulings that may affect the sale
10:59:45	6	<b>A.</b> About a year ago.	11:02:38	6	or -- of a product of this company?
10:59:46	7	<b>Q.</b> And prior to that time, describe your role	11:02:43	7	MS. JOHNSON: Court rulings or?
10:59:50	8	post-merger up to that time.	11:02:45	8	MR. TROUPIS: Correct.
10:59:52	9	<b>A.</b> I was the -- I was in charge of out-licensing	11:02:45	9	THE WITNESS: Could you restate your question.
10:59:57	10	and OEM, as well as some other business development	11:02:47	10	MR. TROUPIS: <b>Q.</b> Is there a process by which
11:00:01	11	activities for the MBS division.	11:02:49	11	court rulings that may affect the sale of a product are
11:00:17	12	<b>Q.</b> And you are the right person. If you'd look	11:02:54	12	communicated within Life Technologies?
11:00:18	13	and see to the left there, Exhibit 2, which I have	11:02:56	13	<b>A.</b> I'm not aware of a formal process.
11:00:22	14	marked for identification, if you would look at that.	11:03:04	14	<b>Q.</b> To your knowledge, has anyone been directed
11:00:26	15	(Whereupon, Exhibit 2 was marked for	11:03:07	15	not to sell a product to a customer as a consequence of
11:00:26	16	identification.)	11:03:13	16	the November 29 ruling of Judge Crabb noted on
11:00:27	17	MR. TROUPIS: <b>Q.</b> I'll explain what that is.	11:03:16	17	Exhibit 2?
11:00:27	18	That's an opinion and order from --	11:03:17	18	<b>A.</b> I have no direct knowledge.
11:00:29	19	MS. JOHNSON: Counsel, do you have a copy of	11:03:28	19	<b>Q.</b> Do you have -- is that to say that it has
11:00:31	20	that?	11:03:31	20	happened or has not happened, or you just don't know if
11:00:32	21	MR. TROUPIS: Oh, didn't I give --	11:03:35	21	anything has happened?
11:00:33	22	MS. JOHNSON: Thank you.	11:03:39	22	<b>A.</b> I have no knowledge of anything that has
11:00:35	23	MR. TROUPIS: <b>Q.</b> It's an opinion and order	11:03:42	23	happened. I don't know.
11:00:37	24	from the Western District of Wisconsin, dated	11:03:49	24	<b>Q.</b> Has there been any discussion about
11:00:40	25	November 29, 2011, from Judge Barbara Crabb.	11:03:51	25	transitioning customers to Promega subsequent to the
		Page 54			Page 56
11:00:45	1	Have you seen this document before?	11:03:54	1	November 29 decision?
11:00:50	2	<b>A.</b> I've seen it as an email attachment, but I've	11:03:56	2	<b>A.</b> I have no knowledge.
11:00:53	3	not seen it as a document.	11:04:37	3	(Whereupon, Exhibit 3 was marked for
11:00:55	4	<b>Q.</b> Okay. And in this order there was a grant of	11:04:37	4	identification.)
11:01:08	5	infringement on page 31 and 32, a summary judgment to	11:04:55	5	MR. TROUPIS: <b>Q.</b> Before we go to Exhibit 3,
11:01:15	6	Promega. Has that, to your knowledge, been communicated	11:04:56	6	who in the company would have knowledge about whether or
11:01:20	7	to any of the business units of the company?	11:05:00	7	not the -- Judge Crabb's decision of November 29 has
11:01:24	8	MS. JOHNSON: And I would just caution you not	11:05:04	8	been communicated to any of the business units?
11:01:26	9	to divulge any exchanges that you may have had with	11:05:12	9	<b>A.</b> Other than my attorneys, I don't know who
11:01:30	10	counsel, either internal or external.	11:05:16	10	would know.
11:01:34	11	THE WITNESS: Pretty much the extent of any	11:05:22	11	<b>Q.</b> And you've seen no general communication to
11:01:35	12	knowledge of this document is through discussions with	11:05:25	12	the company about that decision, have you, other than
11:01:37	13	my attorneys.	11:05:31	13	communications that may have come from counsel?
11:01:38	14	MR. TROUPIS: <b>Q.</b> Do you know if the matter of	11:05:35	14	<b>A.</b> Yes, correct. I've seen no general broadcast
11:01:43	15	infringement on -- that is described on page 32 has been	11:05:38	15	email that I'm aware of to this effect.
11:01:48	16	communicated to any of the business units or any of the	11:05:41	16	<b>Q.</b> I've shown you what has been marked Exhibit 3
11:01:56	17	units of the company?	11:05:46	17	for identification. This is a press release. We
11:01:57	18	<b>A.</b> I have no direct knowledge.	11:05:50	18	happened to get it off the Genome website. It was
11:01:59	19	<b>Q.</b> Do you have indirect knowledge?	11:05:54	19	actually a press statement.
11:02:00	20	<b>A.</b> Any knowledge I have would be from discussions	11:05:56	20	In part, this is a statement, and you may take
11:02:02	21	with my attorneys.	11:05:59	21	a moment and review it. In fact, I would like you to
11:02:07	22	<b>Q.</b> Has any group been directed, to your	11:06:02	22	take a moment and review it. I'm going to ask you a few
11:02:11	23	knowledge, to cease the sale of any products subsequent	11:06:05	23	questions about the context of this and what is refers
11:02:16	24	to this order?	11:06:10	24	to.
11:02:20	25	<b>A.</b> I have no direct knowledge.	11:07:15	25	Dr. Moehle, have you had a chance to review

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		Page 57		Page 59
11:07:17	1	the exhibit?	11:10:05	1 Q. Who were some of the other senior members?
11:07:17	2	A. Yes.	11:10:10	2 A. Of the people mentioned earlier, Rolando
11:07:18	3	Q. And the -- in this Exhibit 3, it reflects on	11:10:13	3 Brawer, Susan Cole, Paula Stonemetz, Todd Krueger.
11:07:25	4	comments made by the Life Tech chairman and CEO, Greg	11:10:20	4 Traci Libby would participate, although she wasn't
11:07:29	5	Lucere, said that the company had assembled a team of	11:10:27	5 formally with that group. And there's probably one or
11:07:31	6	the best licensing people from its Applied Biosystems	11:10:33	6 two others that maybe I'm overlooking.
11:07:37	7	and Invitrogen businesses. And then it goes on to say	11:10:35	7 Q. And I understand that, and I am trying to get
11:07:38	8	that the effort has been able to slow a dropoff of	11:10:38	8 context, to begin with.
11:07:42	9	royalty revenues.	11:10:40	9 When this group met, did they have a formal
11:07:44	10	Do you recall the context of Mr. Lucere's	11:10:44	10 objective, stated objective?
11:07:48	11	comments in October of 2009 about the topic of this	11:10:48	11 A. Increase revenue, maintain and increase
11:07:51	12	article?	11:10:51	12 revenue.
11:07:56	13	A. I'm not entirely clear of your question.	11:10:52	13 Q. What was the issue? Why was that an issue at
11:08:00	14	Q. This reflects that there was a team of	11:10:56	14 the time of the merger?
11:08:04	15	licensing people gathered together to, quote, slow a	11:11:01	15 A. Revenue?
11:08:10	16	dropoff of royalty revenue.	11:11:02	16 Q. Yes. Wasn't it growing enough?
11:08:13	17	You were a part of that team?	11:11:05	17 A. I guess the answer is it's never growing
11:08:15	18	A. As I understand that announcement, I was a	11:11:08	18 enough.
11:08:18	19	part of that team.	11:11:14	19 Q. Had there been a dropoff or expected dropoff
11:08:20	20	Q. When was that team assembled?	11:11:18	20 in expected licensing revenue?
11:08:27	21	A. To my understanding, at the point of the	11:11:20	21 A. Yes.
11:08:31	22	merger. But during the first year, there was an	11:11:21	22 Q. And what was the cause of that?
11:08:35	23	evolution of, you know, the group's coming together, as	11:11:25	23 A. Patent expiries.
11:08:39	24	it were, people from different companies, people from	11:11:28	24 Q. Which patents? Were there particular patents
11:08:42	25	different parts of the company. And so there was an	11:11:30	25 that was happening to?
		Page 58		Page 60
11:08:45	1	evolution of relationship. And so the six-month point	11:11:33	1 A. Multiple.
11:08:49	2	might have been a point that Mr. Lucere is referring to	11:11:34	2 Q. Was there one group of patents?
11:08:53	3	as the start of a new group.	11:11:38	3 A. PCR was -- PCR-related patents were of
11:08:55	4	Q. Who was in this group that Mr. Lucere is	11:11:41	4 particular interest. There was a number of them coming
11:08:58	5	referring to?	11:11:45	5 into expiry.
11:08:59	6	A. Many of the same people that I mentioned	11:12:01	6 Q. Did that group continue its operations for a
11:09:01	7	earlier in my answer to you this morning, people who do	11:12:03	7 while? For how long did it continue, is easier to say.
11:09:07	8	out-licensing work.	11:12:12	8 A. Is your question -- let's go down this path --
11:09:09	9	Q. Do you mean the long list of 10 or --	11:12:16	9 MS. JOHNSON: Oh, yeah, I think we're probably
11:09:13	10	A. Longer than that.	11:12:18	10 getting into an area -- I'm not sure how far you're
11:09:14	11	Q. It was longer than 10, but you listed quite a	11:12:20	11 going to go down the path, but we may be getting into an
11:09:17	12	few.	11:12:23	12 area where we need to excuse.
11:09:18	13	A. Correct.	11:12:25	13 MR. TROUPIS: Oh, I don't mean to, so --
11:09:19	14	Q. Who headed this group?	11:12:32	14 THE WITNESS: My apologies.
11:09:27	15	A. It's -- sorry for a complicated answer.	11:12:33	15 MR. TROUPIS: No, I said that from the outset.
11:09:31	16	There was one person named, Vicki Singer, as	11:12:41	16 MS. JOHNSON: Thank you.
11:09:35	17	the head of the group. But it was a little bit more of	11:12:41	17 (Begin attorneys' eyes only portion.)
11:09:38	18	a confederation. It was not a line reporting	18	
11:09:41	19	relationship. The individual groups were in the	19	
11:09:46	20	business units, and Dr. Singer was in the corporate	20	
11:09:51	21	function.	21	
11:09:55	22	Q. And did this group meet regularly as a group?	22	
11:10:00	23	A. The senior members did, yes.	23	
11:10:03	24	Q. Were you one of those senior members?	24	
11:10:05	25	A. Yes.	25	

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11:12:59	1 MR. TROUPIS: What was the question?	11:15:59	1 in-licensing litigation.
11:13:00	2 (Record read by the reporter.)	11:16:08	2 THE WITNESS: I would say Allen Hammond is the
11:13:01	3 THE WITNESS: Yes, it continued its	11:16:11	3 person I would name as being maybe the focal point where
11:13:04	4 operations.	11:16:21	4 this function integrates, decisions on making filings.
11:13:04	5 MR. TROUPIS: Q. For how long?	11:16:29	5 That's my estimation.
11:13:05	6 A. In the form that it was until about a year	11:16:31	6 MR. TROUPIS: Q. And I'm only asking for
11:13:09	7 ago, when we reorganized the company, and then under	11:16:33	7 that.
11:13:15	8 similar throughout the course of this year as well.	11:16:43	8 At the time of the -- was there any -- strike
11:13:19	9 Q. Oh, okay. So you said it was reorganized. Is	11:16:48	9 that.
11:13:24	10 it the same group of people, or is there a different	11:16:49	10 Was there anything similar to the Exhibit 3
11:13:26	11 group of people now?	11:16:54	11 process in place prior to the merger within
11:13:27	12 A. It's essentially the same group of people who	11:17:02	12 Applied Biosystems?
11:13:30	13 report into Nick Ecos now.	11:17:09	13 A. In what way similar?
11:13:33	14 Q. So Nick now heads that license review process?	11:17:11	14 Q. Again, a very fair question.
11:13:38	15 A. Yes.	11:17:13	15 There was a group formed here with the express
11:14:08	16 Q. And the reason you saw me earlier hesitate is	11:17:17	16 purpose of reviewing, as I understand it, of reviewing
11:14:12	17 I don't want to intrude on the privilege question, but	11:17:20	17 licenses in order to slow the dropoff of revenues.
11:14:15	18 did this group result in filing of any litigation by the	11:17:25	18 And was there a similar group with that
11:14:22	19 company, by Life Technologies, since its origination?	11:17:28	19 function prior to the merger?
11:14:29	20 Did it recommend the filing of litigation, and was the	11:17:34	20 A. I'm having a little trouble with your
11:14:33	21 litigation subsequently filed?	11:17:39	21 characterization of this group.
11:14:35	22 MS. JOHNSON: And I would just caution you not	11:17:41	22 Q. You may characterize this group and then
11:14:37	23 to divulge contents of any communications between this	11:17:43	23 answer that it's the same. I'm just trying to...
11:14:41	24 group and counsel.	11:17:47	24 A. This group was charged with exploiting our
11:14:47	25 THE WITNESS: I'm having a little difficulty	11:17:53	25 intellectual property throughout licensing, perhaps
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11:14:50	1 parsing your question. If I understand your question	11:17:56	1 audits, they were charged with raising revenue.
11:15:00	2 correctly, this group does not generate recommendations	11:17:59	2 The characterization I had a little concern
11:15:04	3 to initiate legal filings.	11:18:01	3 with was, they didn't do it by reviewing existing
11:15:06	4 MR. TROUPIS: Q. Oh, okay.	11:18:04	4 licenses. The goal was to generate new licenses, the
11:15:07	5 A. If I understand your question.	11:18:09	5 biggest goal, if you will. And then going to
11:15:08	6 Q. And, yeah, that's a very fair answer.	11:18:12	6 pre-merger, the group that I headed would be nominally
11:15:12	7 How would that decision go forward? I'm not	11:18:17	7 similar. I headed a group of people whose
11:15:15	8 asking you -- but I'm asking you the process by which a	11:18:20	8 responsibility was to write out-licenses of the
11:15:19	9 decision is made to file litigation, how does that	11:18:24	9 company's IP. And while not as formal as this one, it
11:15:23	10 happen in the company?	11:18:27	10 was an important part of AB's business to generate
11:15:24	11 MS. JOHNSON: Just in general, any sort of	11:18:31	11 revenues from out-licenses.
11:15:27	12 litigation?	11:18:34	12 Q. In doing that, how did you determine that a
11:15:28	13 MR. TROUPIS: No, in regards to licensings.	11:18:37	13 license might be needed? Were -- information came from
11:15:30	14 THE WITNESS: It would a decision made	11:18:41	14 a variety of sources, or did people actually formally go
11:15:32	15 ultimately by legal after consultation between	11:18:45	15 out and look for people who might need licenses?
11:15:36	16 licensing, perhaps, legal, and perhaps business unit	11:18:48	16 A. At what time?
11:15:40	17 stakeholders, if you will.	11:18:50	17 Q. Pre-merger, and then the same question
11:15:42	18 MR. TROUPIS: Q. Oh, okay.	11:18:53	18 post-merger.
11:15:43	19 Who is in charge of that within the legal	11:18:54	19 A. Pre-merger, during the time that I managed the
11:15:46	20 department? Is there a single person in charge of	11:18:58	20 licensing group, the bulk of our efforts, the bandwidth
11:15:48	21 litigation?	11:19:03	21 that we had, were employed granting licenses to people
11:15:52	22 MS. JOHNSON: Objection. Vague and ambiguous.	11:19:08	22 who came to us and then occasionally in settlement
11:15:53	23 The concern is just any specific type of litigation	11:19:11	23 litigation such as the Promega, where the two parties
11:15:55	24 generally?	11:19:14	24 needed to do licenses as part of a different reason, a
11:15:56	25 MR. TROUPIS: Again, out-licensing type or	11:19:19	25 disagreement, if you will. Much less focus on going out



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11:19:26	1 after people, because I did not have -- I was fully	11:23:36	1 to us --
11:19:28	2 engaged with the people who came to me.	11:23:38	2 A. Sorry, IVGN?
11:19:31	3 Q. And then post-merger how was it different?	11:23:40	3 Q. 001609 through --
11:19:35	4 A. It was different in a lot of ways. One way in	11:23:45	4 A. Oh, now I understand you. I'm sorry.
11:19:38	5 which it was different was the integration of the two	11:23:47	5 Q. Just so the record reflects --
11:19:41	6 corporate cultures. There was a very significant	11:23:49	6 A. I thought you were reading more numbers off
11:19:44	7 contribution of the Invitrogen culture, if you will,	11:23:51	7 the end that I couldn't see.
11:19:47	8 which I was not familiar with prior to the merger.	11:23:55	8 Q. It's just the range of numbers. This was
11:19:52	9 But out-licensing was treated much more like a	11:23:57	9 provided to us as part of the ongoing arbitration
11:19:56	10 business of its own, with little more regular monitoring	11:24:00	10 process.
11:20:03	11 of out-licensing revenue as an entity itself.	11:24:01	11 And it appears to be a document related to the
11:20:06	12 Pre-merger, the out-licensing revenues were more a	11:24:06	12 discussion we're just now having about Mr. Lucere's
11:20:13	13 function of individual businesses.	11:24:12	13 comments concerning patent expirations, your group that
11:20:30	14 Q. Well, PCR -- after the PCR process is a	11:24:20	14 you created. You can take a moment and familiarize
11:20:38	15 full-time job. I understand that.	11:24:23	15 yourself with this, and I'll just ask some follow-up
11:20:55	16 When there's a claim of infringement, somebody	11:24:26	16 question.
11:20:58	17 has made a claim that a product, process of	11:24:27	17 A. All of the pages?
11:21:03	18 Life Technologies has infringed a patent, does that come	11:24:27	18 Q. Yes, if you would, if you would.
11:21:07	19 to your department or does it go directly to legal or	11:26:23	19 A. I'm going to apologize in advance. It looks
11:21:11	20 something else?	11:26:26	20 like we'll be talking about this for a couple of
11:21:14	21 A. Just to clarify, if a third party makes an	11:26:30	21 minutes.
11:21:17	22 acquisition?	11:26:30	22 May I take a quick break and go to the
11:21:19	23 Q. Yes. Yes.	11:26:33	23 bathroom?
11:21:20	24 A. It comes wherever the third party directs it.	11:26:35	24 Q. Absolutely.
11:21:23	25 Q. There's no process by which it ends up	11:26:35	25 THE VIDEOGRAPHER: This marks the end of Video
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11:21:27	1 automatically in your group, either pre- or post-merger?	11:26:43	1 I in the deposition of Charles M. Moehle. Going off the
11:21:34	2 A. There is no process where it automatically	11:26:48	2 record. The time is 11:26 a.m.
11:21:37	3 comes in my group, pre- or post-merger.	11:33:36	3 (Recess taken.)
11:21:42	4 Q. Now, let me make it to the absolute present.	11:34:35	4 THE VIDEOGRAPHER: We're back on the record.
11:21:45	5 Would that still be the case, given the role that you	11:34:36	5 Here marks the beginning of Video 2 in the deposition of
11:21:48	6 described a minute ago about settlement and --	11:34:41	6 Charles M. Moehle. The time is 11:34 a.m.
11:21:56	7 settlement issues, problems, your description of your	11:34:47	7 MR. TROUPIS: Q. Dr. Moehle, before the break
11:21:59	8 own role?	11:34:49	8 we marked Exhibit 4. And let me ask you, do you
11:22:04	9 A. Restate your question.	11:34:54	9 recognize this?
11:22:05	10 Q. I apologize.	11:34:57	10 A. Yes.
11:22:06	11 You described at the beginning -- a little bit	11:34:57	11 Q. What is it?
11:22:09	12 ago, you described your role in a certain way. And so	11:35:00	12 A. It is a report from the out-licensing group.
11:22:15	13 in that new role, do claims of infringement lodged	11:35:06	13 I don't recall the precise date, although I could infer
11:22:23	14 against Life Technologies automatically come to you?	11:35:09	14 it from here, but it is a report of the activities of
11:22:26	15 A. No, they don't automatically come to me.	11:35:14	15 the out-licensing department.
11:22:29	16 Q. Who makes that decision to assign the matter	11:35:22	16 Oh, I'm sorry. It was not an out-licensing
11:22:33	17 to you?	11:35:24	17 department.
11:22:35	18 A. I would say there's no formal process.	11:35:25	18 Q. Yeah. It was an out-licensing group, an
11:23:16	19 (Whereupon, Exhibit 4 was marked for	11:35:27	19 out-licensing group.
11:23:16	20 identification.)	11:35:28	20 When it says -- I'm going to ask you some of
11:23:16	21 MR. TROUPIS: I've marked a document Exhibit 4	11:35:31	21 these abbreviations, which may not automatically be
11:23:20	22 for identification. It says "Out-licensing rollout	11:35:35	22 obvious to me. On the first page, page 1, 1609, it
11:23:24	23 Patent Expiration," and then it has a title. And it	11:35:41	23 shows 2009 MBS SR1 forecast. Can you tell me what that
11:23:29	24 bears IVGN160921614.	11:35:46	24 means.
11:23:33	25 Q. I'll represent to you that this was provided	11:35:47	25 A. Sure. MBS is the molecular biology division,



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11:35:52	1 Molecular Biology Systems division where I worked. And	11:38:47	1 my recollection that this was part of the planning
11:35:55	2 SR1 is part of a strategic review process that the	11:38:51	2 towards the end of 2010 looking forward to 2011. And
11:35:59	3 company goes through every year. There's SR1 and SR2,	11:38:57	3 the reason why I say that is as you get to slide 5, five
11:36:03	4 where there's sort of a first cut in SR1 of what the	11:39:01	4 within the internal numbering, it's looking in a
11:36:09	5 future looks like and a more refined planning process in	11:39:06	5 detailed way about what 2011 would.
11:36:12	6 SR2 for the upcoming year.	11:39:11	6 Q. Okay.
11:36:15	7 Q. So there would -- and you mentioned it was for	11:39:15	7 A. We wouldn't have done that two years in
11:36:17	8 2009. So there would be an SR1 and SR2 forecast for	11:39:17	8 advance.
11:36:22	9 each year?	11:39:18	9 Q. So when it says on the first page, "2009 MBS
11:36:23	10 A. Yes, it was a two-part process.	11:39:22	10 SR1 Forecast," that's reflecting back on the original
11:36:26	11 Q. But when I see SR1 or SR2, you have to know	11:39:26	11 forecast from 2009 in that SR1 process? Am I correct in
11:36:31	12 the year in which it applies to know the year it applies	11:39:35	12 interpreting it that way?
11:36:36	13 to?	11:39:37	13 A. Would you ask your question again.
11:36:36	14 A. Yes.	11:39:39	14 Q. Sure. When I looked at page 1609, and I'm
11:36:37	15 Q. I'm not trying to be obtuse. You mentioned	11:39:43	15 referring to the Bates number, it shows "2009 MBS SR1
11:36:39	16 that SR1 and SR2 were processes each year.	11:39:48	16 Forecast" and then underneath it, it has different
11:36:43	17 A. Yes, processes each year.	11:39:53	17 numbers, a graph.
11:36:46	18 Q. And we see on the left-hand side there, MBS,	11:39:55	18 A. Uh-huh.
11:36:50	19 that's the division you just mentioned; is that right?	11:39:55	19 Q. And I'm just saying, based on what you just
11:36:52	20 A. Yes.	11:39:58	20 said, that that appears to be looking back as to a
11:36:52	21 Q. What is UDG?	11:40:02	21 prediction that was made in 2009.
11:36:54	22 A. UDG is uracil-DNA glycosylase.	11:40:11	22 A. I believe that is accurate, and I'm slightly
11:36:59	23 Q. I presume that's a type of some product or	11:40:13	23 hesitant because there's a little ambiguity in the way
11:37:03	24 patent group?	11:40:17	24 that it's written. Typically, the way we would describe
11:37:04	25 A. It specifically refers to a protein or a gene	11:40:23	25 it, sometimes a 2009 SR1 forecast would have occurred in
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11:37:07	1 from bacteria. And there was -- there is IP owned by	11:40:30	1 2008, because it would be -- and there was no 2009 SR1
11:37:13	2 Life Technologies on the use of that protein in the PCR	11:40:37	2 process from my side, because the merger --
11:37:17	3 process.	11:40:40	3 Q. Didn't exist, yeah.
11:37:19	4 Q. And what's the CS stand for there?	11:40:42	4 A. So I believe this was just from a graph from
11:37:24	5 A. Cell systems. At the time of this, that was	11:40:44	5 the 2009 SR1 process for 2010, even though it's a little
11:37:27	6 one of the other divisions of the company.	11:40:53	6 bit ambiguous the way that it's named.
11:37:32	7 Q. That is kind of why you can date this, I	11:40:55	7 Q. That makes sense.
11:37:34	8 gather, that this division existed at that time?	11:40:57	8 And when it shows to the left there, I assume
11:37:39	9 A. I suppose so.	11:41:00	9 that's approximately 48M or 48 million and approximately
11:37:41	10 Q. I don't mean to put words in your mouth.	11:41:06	10 17M or million, is that the anticipated loss of revenue
11:37:44	11 A. I'm not using that as part of the reason how I	11:41:11	11 from those two sources? Is that how to interpret that?
11:37:47	12 date this.	11:41:29	12 A. I'm not -- in refreshing my memory and doing
11:37:47	13 Q. What do you think is the likely date of this?	11:41:31	13 the math, but 50, 60, I believe not, only from the math,
11:37:50	14 A. This document?	11:41:40	14 that 48 plus 17 is close to 72.
11:37:51	15 Q. Yes. Or time period, would be a better way to	11:41:48	15 Q. No, that would 65.
11:37:57	16 put it.	11:41:50	16 A. Right, I said "close." There were other parts
11:38:01	17 A. I believe -- just give me a moment to look	11:41:52	17 to the --
11:38:03	18 just to refresh my memory, because a little bit of a	11:41:52	18 Q. Oh, I see what you're looking at. I'm
11:38:07	19 blur.	11:41:54	19 actually looking at the title, "Patent Expiration Will
11:38:27	20 Okay. My memory doesn't tell me exactly, but	11:41:59	20 cause 65M Profit Loss by 2015." So then I'm
11:38:30	21 these were all pages that were together originally. As	11:42:05	21 interpreting the 48 and the 17 as the cumulative effect
11:38:34	22 they were produced, they were produced together,	11:42:10	22 by 2015.
11:38:37	23 correct?	11:42:11	23 A. I think that's actually a fair
11:38:38	24 Q. That's correct.	11:42:13	24 characterization. I was not looking at the title. I
11:38:42	25 A. So this appears to me and is consistent with	11:42:15	25 was looking at the graph.

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11:42:17	1 Q. The graph that I had pointed you to before.	11:46:03	1 those would be those type of organizations.
11:42:19	2 So that's what I'm looking at.	11:46:10	2 And it notes that "Promega STR sublicensing
11:42:21	3 A. Yes. And the graph does not go to 2015.	11:46:14	3 legal actions underway," and that's consistent again
11:42:23	4 That's why I was doing the math off the graph.	11:46:16	4 with the date that you provided a little bit ago, by
11:42:28	5 Q. That's because you're a scientist and I'm a	11:46:17	5 2010.
11:42:30	6 lawyer.	11:46:19	6 Underneath that it says "made or exceeded
11:42:36	7 Let's try to interpret that graph. What do	11:46:22	7 AOP." What's AOP?
11:42:39	8 those numbers do you think reflect, 72, 68, 46, and 25?	11:46:28	8 A. Give me a moment, because it's -- oh, yes,
11:42:48	9 If you know, if you can reasonably speculate.	11:46:31	9 annual operating plan. It's an acronym that I use so
11:42:55	10 A. I have a reasonable belief that I know what	11:46:36	10 much that I sometimes forget what it means. It's annual
11:42:57	11 they are. And just to clarify a prior answer, 48 plus	11:46:39	11 operating plan.
11:43:02	12 17 wouldn't make sense for another reason. It's my	11:46:40	12 Q. What is the annual operating plan?
11:43:06	13 recollection that this is probably a graph of the MBS	11:46:43	13 A. It's the -- the revenue goals that are set at
11:43:09	14 royalty revenue forecast, not the entire company but the	11:46:47	14 the beginning of the year or at the end of the prior
11:43:14	15 MBS division, in part because there was a little more	11:46:51	15 year. So it's a plan. It's an annual plan for the
11:43:18	16 structure in that division and in 2009 we were	11:46:56	16 operation.
11:43:21	17 forecasting 72 million in revenue for licensing and O --	11:46:58	17 Q. And was that for the whole company, or is it
11:43:27	18 I think it was licensing and OEM, but the OEM component	11:47:00	18 done in a different way for divisions or groups?
11:43:33	19 was relatively small, and then over the next couple of	11:47:05	19 A. Yes.
11:43:36	20 years, we were expecting patent expiries to result in a	11:47:05	20 Q. Yes, it is done different for divisions and
11:43:39	21 lowering of the royalty revenue.	11:47:08	21 groups?
11:43:56	22 Q. It looks like it's pretty close to 48 million,	11:47:08	22 A. For the whole of the company and divisions and
11:44:00	23 the decrease from 72 to 25.7. So what you've just said	11:47:11	23 groups.
11:44:07	24 makes perfect sense, that that's the MBS division that's	11:47:12	24 Q. So when it references AOP here, that would be
11:44:10	25 being shown in the graph.	11:47:15	25 for the GOLC group? "Here" meaning page 1610.
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11:44:11	1 A. Uh-huh, the math would be consistent.	11:47:22	1 A. Yes. It's my recollection that was referring
11:44:14	2 Q. Let's go to the next page, which is 1610.	11:47:23	2 to the GOLC AOP.
11:44:21	3 What does it mean "Formed GOLC"? What is GOLC?	11:47:31	3 Q. Distinguish that from the SR1 and SR2.
11:44:26	4 A. That was the -- the -- the out-licensing	11:47:38	4 A. SR1 and SR2 are planning, and AOP is the plan.
11:44:31	5 group, the acronym stands for "Global Out-Licensing	11:47:45	5 Q. So very much like the budget in advance?
11:44:36	6 Committee." It wasn't a department, it was more of a	11:47:48	6 A. Yes.
11:44:39	7 committee.	11:47:51	7 Q. Then on the next page, page 1611, something I
11:44:40	8 Q. And when it says "Global," this would be	11:48:11	8 don't understand. It has 2010 fees and royalties and
11:44:44	9 revenues from around the world, then? You weren't	11:48:18	9 then it has 2010 OEM sales. And I believe you've
11:44:49	10 restricted simply to U.S. patents?	11:48:23	10 distinguished between those. Can you distinguish those
11:44:53	11 A. Correct. Around the company, around the	11:48:27	11 again. They would seem both like royalties to me.
11:44:54	12 world.	11:48:35	12 A. Well, what's your question?
11:45:05	13 Q. On the right side, it says "New Cell Line	11:48:36	13 Q. Can you distinguish between OEM and royalties
11:45:10	14 Licensing Program." What is that, if you remember?	11:48:39	14 for us?
11:45:21	15 A. I partially remember, and if my recollection	11:48:41	15 A. Sure. Maybe not a 100 percent, but --
11:45:24	16 serves me, it would have been part of the CS group on	11:48:46	16 Q. As you --
11:45:28	17 the prior page.	11:48:47	17 A. -- as I see this document, without checking
11:45:33	18 Q. And when it says underneath that, "New CE	11:48:50	18 the records, the royalties would be the running
11:45:37	19 Licensing," what does the CE refer to?	11:48:53	19 royalties on licenses, and the OEM sales is the amount
11:45:40	20 A. CE is capillary electrophoresis in our usage.	11:49:01	20 attributed to the sales of actual product by this group.
11:45:45	21 Q. Again, for clarification, it says "New CRO	11:49:08	21 So it's -- you know, it's the transfer price.
11:45:49	22 Projects." What is CRO?	11:49:11	22 And I believe if there were royalties associated with
11:45:52	23 A. CRO is an acronym for contract research	11:49:16	23 the OEM sales, those would be royalties again. But my
11:45:56	24 organization.	11:49:21	24 recollection is not a hundred percent clear on that.
11:45:57	25 Q. Oh, okay. So thus Covance and Charles River,	11:49:31	25 Q. Again, forgive me if you said this before, the

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11:49:35	1 OEM royalty grouping was -- came from Applied	11:53:06	1 million, and year-on-year percent in the last column,
11:49:41	2 Biosystems; is that right? You used the same sort of	11:53:11	2 negative 19 percent.
11:49:46	3 grouping pre-merger?	11:53:13	3 Does the 17.6, that's the -- appears to be
11:49:50	4 A. Grouping?	11:53:19	4 simply the decrease in revenue for PCR systems from 2010
11:49:51	5 Q. You talked about them together. When we went	11:53:24	5 to 2011, predicted?
11:49:56	6 to the front, for example, 1609, when we refer to the	11:53:26	6 A. It is the change year-over-year.
11:50:01	7 totals, this is a combination of OEM and royalties?	11:53:28	7 Q. And then the last column, the 19 percent is
11:50:09	8 A. Everything in this document refers to	11:53:31	8 the change expressed in a percentage?
11:50:12	9 post-merger.	11:53:34	9 A. Correct.
11:50:13	10 Q. Okay. And I was asking in pre-merger, were	11:53:43	10 Q. Where would STRs, if they're here anywhere,
11:50:17	11 these same terms used at Applied Biosystems?	11:53:47	11 the STR fall, would they fall here?
11:50:21	12 A. We would refer to some OEM sales, I'm pretty	11:53:56	12 A. Could I have one minute to talk to my
11:50:29	13 sure.	11:53:58	13 attorney?
11:50:29	14 Q. Okay. I was just trying to distinguish again,	11:53:59	14 Q. Absolutely.
11:50:32	15 because we have these two separate accounting systems	11:54:01	15 THE VIDEOGRAPHER: Going off the record. The
11:50:35	16 which are being merged together here, that this was	11:54:02	16 time is 11:53 a.m.
11:50:39	17 something that either came from Applied Biosystems or	11:54:05	17 (Recess taken.)
11:50:43	18 from Invitrogen or is something of both.	12:03:04	18 THE VIDEOGRAPHER: We're back on the record.
11:50:50	19 A. Probably something of both is most accurate.	12:03:04	19 The time is 12:03 p.m.
11:51:02	20 Q. Let's just take the first item to help me	12:03:10	20 MR. TROUPIS: Can you repeat the last
11:51:05	21 understand. And so it says -- I'm talking about 1611.	12:03:12	21 question.
11:51:09	22 It says "PCR Systems" and it has the royalty amounts for	12:03:13	22 (Record read by the reporter.)
11:51:15	23 2010, and there's a decreased royalty amount in the next	12:03:35	23 THE WITNESS: Could you explain what you mean
11:51:19	24 column. Would those -- what are those? Are those the	12:03:36	24 by an STR?
11:51:26	25 predicted royalty decrease for PCR systems from 2010 to	12:03:40	25 MR. TROUPIS: Q. There was licensing revenue
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11:51:31	1 2011?	12:03:42	1 being generated under the 1996 agreement between Promega
11:51:36	2 A. Ask your question one more time.	12:03:46	2 and Research Genetics that came with the Invitrogen,
11:51:38	3 Q. Does the 85 and then the 68, is that the	12:03:52	3 Invitrogen merged, and that's the in-licensing, in --
11:51:45	4 predicted falloff in PCR systems royalties from 2010 to	12:03:59	4 the money coming in from a license, and those were on
11:51:51	5 2011?	12:04:04	5 what I refer to STR technology.
11:51:55	6 A. As I understand your question, no.	12:04:11	6 A. So if I can restate to make sure I understand.
11:51:57	7 Q. Okay. What is it?	12:04:16	7 Q. Absolutely.
11:52:00	8 A. It's in both cases a prediction of the total	12:04:17	8 A. You're asking -- you said in-license. So I
11:52:03	9 annual royalties for that year.	12:04:19	9 just want to -- whereas Invitrogen, if you will, had
11:52:05	10 Q. Okay. And if we took the difference between	12:04:24	10 out-licensed to Promega and received royalties from
11:52:08	11 the 2010 and 2011, that would be the decrease?	12:04:28	11 Promega, where would those royalties go? Is that the
11:52:10	12 A. Correct, correct.	12:04:31	12 question that you asked me?
11:52:12	13 Q. And then in the 2010 OEM sales and 2011 OEM	12:04:32	13 Q. Yes, that's right, that's right. And your
11:52:18	14 sales, it would again be the predicted, your term, total	12:04:34	14 correction is right. You call it -- it was an
11:52:22	15 sales and the difference would be the decrease in --	12:04:38	15 out-license?
11:52:27	16 A. Correct.	12:04:40	16 A. That would fall under Molecular Biology
11:52:32	17 Q. It appears, when it says the 2010 totals and	12:04:42	17 Reagents in the third line, third row of this.
11:52:34	18 the 2011 totals column, that that's -- that each is the	12:04:52	18 Q. And I do apologize for confusing at times on
11:52:39	19 sum of the royalty and OEM for 2010 and then the sum of	12:04:57	19 in-license and out-license, because from one person's
11:52:44	20 the royalties and OEM for 2011?	12:05:02	20 perspective it's an in-license and from another
11:52:47	21 A. For that line.	12:05:04	21 company's perspective it's an out-license and vice
11:52:49	22 Q. Yes. That's how I'm interpreting it.	12:05:07	22 versa.
11:52:54	23 A. Yes.	12:05:07	23 In the situation where Applied Biosystems is
11:52:54	24 Q. And then YOY, looks like year-on-year	12:05:20	24 paying an amount for the STR licenses, would that be
11:52:58	25 difference for dollars, and it shows 17.6, presumably	12:05:25	25 included in any of these statistics that we're looking

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12:05:28	1	at on 1611 or in this document?	12:09:35	1 the difference between the projected and the target was
12:05:37	2	A. It -- likely it would not.	12:09:38	2 the gap.
12:05:47	3	Q. Is there no netting of the in-license and	12:10:03	3 Q. So in our -- the term you used earlier in
12:05:52	4	out-license for the technology as far as this time	12:10:07	4 terms of revenue enhancement, it's the how much can
12:05:54	5	period? This time period being the time period of the	12:10:14	5 decrease that 9.2 expected gap that would be the
12:05:57	6	document that we're looking at, Exhibit 4.	12:10:18	6 objective of the committee, either decrease it or even
12:06:02	7	A. You would have to explain what you mean by	12:10:27	7 go into the positive?
12:06:05	8	"netting."	12:10:30	8 A. Okay. Your question doesn't --
12:06:12	9	Q. I'm presuming that Applied Biosystems and	12:10:35	9 Q. Okay. I do apologize if it doesn't.
12:06:16	10	Invitrogen understood that one of the entities was	12:10:39	10 The gap in this case is, as you said, the
12:06:19	11	repaying an amount to Promega and Promega was paying	12:10:44	11 difference between the target and the total.
12:06:24	12	back a portion to Life Technologies, one of its	12:10:51	12 Where is the target derived?
12:06:33	13	divisions. So there was a net effect of a payment and a	12:10:57	13 A. To be honest, I don't know how the target was
12:06:39	14	receipt within the Life Technologies family. Is there	12:10:59	14 derived.
12:06:43	15	an accounting for that anywhere in this document?	12:11:01	15 Q. It's a hoped-for number of some type?
12:06:51	16	A. Most likely not.	12:11:04	16 A. It's a target.
12:06:55	17	Q. Why do you say "most likely." Is there some	12:11:08	17 Q. And I get some help in the -- underneath here
12:06:59	18	reason you're hesitating?	12:11:14	18 as to the purpose where it says "Improved significantly
12:07:02	19	A. Hypothetically it could -- there could be a	12:11:18	19 from SR1 194M forecast and pre SR2 101 F & R rollup, gap
12:07:05	20	small representation on this document if anyone had an	12:11:27	20 remains."
12:07:09	21	OEM business in products that were covered by that	12:11:31	21 Can you interpret that? I think I understand
12:07:17	22	license. I'm not aware of that.	12:11:34	22 it, but can you interpret what this means?
12:07:22	23	Q. That's fair, very fair.	12:11:39	23 A. And the "this" being?
12:07:25	24	Let me make it a bigger question, then.	12:11:40	24 Q. "This" being the improved through projection.
12:07:27	25	In the GOLC group, which is what Exhibit 4 is	12:11:45	25 A. So "Improved significantly from SR1,
		Page 82		Page 84
12:07:33	1	focused on, was there any attempt to net in-licenses and	12:11:48	1 194 million forecast," this is presumably, and I believe
12:07:43	2	out-licenses when they were in the same area or the same	12:11:53	2 I recall, it's part of the SR2 process, the later stage
12:07:48	3	patent family?	12:11:57	3 of the planning process.
12:07:54	4	A. As I understand your question, no.	12:11:59	4 And in the earlier stage, there had been a
12:07:57	5	Q. So this was strictly -- pardon me, what	12:12:03	5 more pessimistic projection for the coming year of 194
12:07:59	6	money -- this being Exhibit 4 -- was strictly when money	12:12:09	6 versus 206 in -- 206.8 in the current document.
12:08:05	7	was coming to Life Technologies from licensees outside	12:12:18	7 And it's also improved significantly from the
12:08:11	8	the company, that that's what this was focused on, this	12:12:21	8 pre SR2. And to be honest, I don't recall off the top
12:08:17	9	being Exhibit 4?	12:12:25	9 of my head what the 101 million F & R -- oh, fees and
12:08:18	10	A. Mostly.	12:12:30	10 royalties rollup. So a more limited set that is
12:08:19	11	Q. Except for the OEM?	12:12:34	11 currently listed as 107.2, 2011, fees and royalties.
12:08:21	12	A. Correct.	12:12:41	12 I don't have the recollection, but my
12:08:35	13	Q. At the bottom it shows -- at 1611, it shows	12:12:44	13 interpretation was that prior to the formal SR2 process,
12:08:45	14	Life Total, Target, and Gap. Can you explain what each	12:12:49	14 there was an informal estimate of 101 million fees and
12:08:48	15	one of those categories are.	12:12:54	15 royalties rollup.
12:08:55	16	A. So the life total is the sum of the column	12:12:56	16 Q. That makes sense.
12:09:00	17	above it, keeping in mind there are subtotals in	12:12:57	17 A. So on the second line, there's a gap
12:09:03	18	between, not to count twice.	12:12:59	18 remaining, referring to the gap that's shown. And then
12:09:06	19	Q. And we did talk about that a minute ago,	12:13:04	19 it calls out the MBS, which is the top set of lines.
12:09:08	20	above.	12:13:18	20 I have a feeling I know what that means, but I
12:09:09	21	A. Okay.	12:13:34	21 have to say, since I'm not certain, I'd rather not
12:09:13	22	And then this document was part of the	12:13:39	22 speculate. I don't see an immediate math from this.
12:09:16	23	planning process. And so a target was being discussed	12:13:42	23 Because I could be wrong, I'd rather not speculate.
12:09:22	24	for the 2011, the coming year. So in this case for fees	12:13:45	24 Q. And now it gets to that, where I had mentioned
12:09:27	25	and royalties, \$116 million; for OEM, \$100 million; and	12:13:48	25 earlier, when we talk about improvements, these are --

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12:14:04	1 we were talking about an improvement above an expected	12:17:10	1 Q. That's fair.
12:14:10	2 dropoff so that when it says "SR1 194M," you compared	12:17:10	2 Do you know if these projections in the past
12:14:19	3 that to the 206.8 shown above, which is the -- and it's	12:17:13	3 had been accurate at all, SR1 and SR2 forecasts for OEM
12:14:28	4 an improvement because you, in fact, received more, that	12:17:21	4 royalty and revenue, had they been, relatively speaking,
12:14:33	5 is, Life Technologies received more revenue than	12:17:24	5 accurate?
12:14:38	6 originally predicted.	12:17:24	6 A. The only way to know if they're accurate is
12:14:41	7 A. Could you ask that as a question.	12:17:27	7 after they come to fruition.
12:14:42	8 Q. Sure. It appears to me that the document	12:17:30	8 Q. Well, they've done this each year, and I'm
12:14:45	9 considers an improvement to be an increase in the	12:17:33	9 asking whether or not the committee had, relatively
12:14:49	10 revenue received over what was originally projected as	12:17:37	10 speaking, accurately depicted the outcomes?
12:14:56	11 the revenue to be received?	12:17:40	11 A. You need to reflect on the timing of the
12:14:59	12 A. As I understand your question, the answer is	12:17:42	12 merger.
12:15:01	13 no.	12:17:50	13 Q. Why do you say that?
12:15:03	14 Q. Then what it is?	12:17:52	14 A. The merger occurred at the end of 2008. 2009
12:15:06	15 A. I was confused by your question.	12:18:00	15 would not have been a product of any prediction I made,
12:15:09	16 Q. You compared the 194 to the 206 in your	12:18:06	16 for instance, having come from the other company.
12:15:13	17 response.	12:18:09	17 Q. These were the first sets of predictions, the
12:15:16	18 A. Correct.	12:18:12	18 ones we're looking at here?
12:15:16	19 Q. Why is the 206 better than the 194?	12:18:15	19 A. I don't know that I can answer that, either.
12:15:20	20 A. It is a larger number.	12:18:17	20 Q. Are these the first set of predictions at
12:15:22	21 Q. And it's a larger revenue number for	12:18:22	21 Life Technologies on these topics?
12:15:24	22 Life Technologies; is that right?	12:18:31	22 A. This was 2010. I would say no.
12:15:26	23 A. Correct.	12:18:32	23 Q. What would have preceded it?
12:15:27	24 Q. And because more revenue has been received	12:18:34	24 A. It depends to some extent on your definition.
12:15:30	25 than was projected to be received, that is an	12:18:36	25 But at Life Technologies, at the end of 2009, there
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12:15:35	1 improvement as a result of the committee's work?	12:18:39	1 would have been a similar process.
12:15:47	2 A. There is a supposition in your question that's	12:18:44	2 Q. And do you recall when they went through that
12:15:50	3 incorrect.	12:18:46	3 process in 2009 that it had -- had it accurately
12:15:53	4 Q. And what is that?	12:18:50	4 predicted the revenues?
12:15:55	5 A. That the future had already happened. This	12:18:55	5 A. Accuracy is in the eye of the beholder.
12:15:58	6 doesn't refer to any revenue received.	12:18:59	6 Q. I said "relatively," I think.
12:16:01	7 Q. The projection has improved, not the actual	12:19:03	7 A. They were not identical. I don't know when
12:16:04	8 revenue at this point.	12:19:05	8 you're outside the realm of accurate.
12:16:05	9 A. Correct, correct.	12:19:09	9 Q. Would this number, the 206.8 on 1611, be
12:16:17	10 Q. And the projection presumably has improved	12:19:15	10 something on which management would reasonably rely?
12:16:20	11 because there was some expectation by group that, in	12:19:21	11 MS. JOHNSON: Objection. Lack of foundation.
12:16:26	12 fact, there would be improvement. Is that a fair	12:19:22	12 MR. TROUPIS: Q. Is it a number that you
12:16:30	13 statement?	12:19:23	13 would reasonably rely upon?
12:16:30	14 A. It's not a logical statement. The way it's	12:19:26	14 A. 206.8?
12:16:34	15 constructed, I don't know how to answer it.	12:19:29	15 Q. Yes.
12:16:37	16 Q. Why was there a different number at this point	12:19:29	16 A. I would not have the basis to reasonably rely
12:16:39	17 in the year than earlier in the year?	12:19:32	17 on that number.
12:16:42	18 A. The number would have been different for a	12:19:33	18 Q. So it is inaccurate?
12:16:44	19 number of -- a number of reasons. It was later in the	12:19:35	19 A. I did not say that.
12:16:48	20 year, there's additional information available. It's	12:19:38	20 Q. Would anyone that you know reasonably rely
12:16:52	21 the second cycle, there's a lot closer scrutiny. And in	12:19:41	21 upon that number at Life Technologies in making
12:16:57	22 between, there would have been a lot of flogging by	12:19:44	22 corporate decisions?
12:17:01	23 senior people to make the number larger.	12:19:46	23 A. 206.8?
12:17:04	24 At the moment, I can't tell you which was most	12:19:48	24 Q. Uh-huh.
12:17:09	25 influential.	12:19:49	25 A. I don't think anyone did.



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12:19:51	1 Q. So why did they write it down?	12:23:17	1 A. MBS is Molecular Biology Systems. CS is cell
12:19:55	2 A. It was the process of making predictions.	12:23:31	2 systems. GS is genetic systems. And I believe MD was
12:20:00	3 Q. Why do you need --	12:23:39	3 more aspirational in that regard, and I believe that it
12:20:01	4 A. Forecasting.	12:23:42	4 stood for molecular diagnostics. These were -- so
12:20:02	5 Q. Why do you need predictions? You told me no	12:23:49	5 you're --
12:20:05	6 one relies on them, why would you do them?	12:23:50	6 Q. Interpreting "STR kits for small HID
12:20:07	7 A. I didn't tell you no one relies on them.	12:23:53	7 companies," what does that refer to?
12:20:10	8 Q. Who relies on this document?	12:23:56	8 A. This document refers to out-licensing and OEM
12:20:11	9 A. On this document?	12:24:00	9 opportunities. And so in the same way, "STR kits for
12:20:13	10 Q. Yes.	12:24:06	10 small HID companies" would have referred to STR, short
12:20:14	11 A. Senior management relies on this document.	12:24:12	11 tandem repeat, related kits. "For small HID," would
12:20:18	12 Q. So did you think they were justified in	12:24:17	12 typically mean human identification companies.
12:20:20	13 relying upon it?	12:24:21	13 Q. I notice that just below that, it says
12:20:21	14 A. On the document?	12:24:23	14 "Savings on Caltech Sequencing Royalties and Roche HID
12:20:23	15 Q. Yes.	12:24:27	15 Royalties." What is it referring to when it says "Roche
12:20:24	16 A. Reasonably so.	12:24:31	16 HID Royalties," if you know?
12:20:25	17 Q. So you're not judging these to be inaccurate	12:24:47	17 A. I'm just --
12:20:28	18 numbers?	12:24:48	18 MS. JOHNSON: The concern, Counsel, is that we
12:20:30	19 A. I'm not judging them to be inaccurate numbers.	12:24:50	19 could be getting into an area where there are
12:20:44	20 Q. Do you know if after the -- this document was	12:24:53	20 confidentiality obligations with third parties that he's
12:20:47	21 done if -- this document being Exhibit 4, that these	12:24:56	21 not allowed to disclose. I don't know if he can answer
12:20:53	22 projections were, in fact, met or is there a document	12:24:59	22 the question without divulging that sort of information.
12:20:56	23 that looks back to see if they were accurate?	12:25:01	23 MR. TROUPIS: Why don't we hold it until after
12:21:00	24 MS. JOHNSON: And, Counsel, you're referring	12:25:04	24 lunch so you guys can talk about it. I obviously don't
12:21:01	25 to the 2011 productions?	12:25:10	25 know or I wouldn't have asked.
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12:21:05	1 MR. TROUPIS: Actually, any of the items that	12:25:16	1 Q. It has this general item here, and it says
12:21:08	2 were otherwise predictable as opposed to statement of	12:25:19	2 "Website Buildup, Marketing Tools, Enhanced Sales
12:21:11	3 existing fact.	12:25:25	3 Partnerships."
12:21:16	4 THE WITNESS: In this case this would have	12:25:25	4 What did you interpret that to mean, "Website
12:21:17	5 been towards the end of 2010, and so most of the 2010	12:25:29	5 Buildup" and then "Marketing Tools"? I didn't
12:21:21	6 numbers should have been reflecting actuals with	12:25:32	6 understand the relationship to the document.
12:21:25	7 relatively little predictions in them at that point.	12:25:40	7 A. These -- the context in the slide is less
12:21:30	8 Whatever this current fiscal year 2011 results are would	12:25:46	8 clear, but this line, "Website Build-out," was an
12:21:35	9 be the test of the accuracy of these numbers.	12:25:51	9 aspiration to have a more robust outward face, a website
12:21:40	10 MR. TROUPIS: Q. Based on your knowledge of	12:25:55	10 for the GOLC that would stimulate out-licensing and OEM
12:21:42	11 2011, will they be met?	12:26:01	11 revenues.
12:21:50	12 A. Based on my knowledge, I believe that yes,	12:26:01	12 Q. Oh, okay.
12:21:52	13 they will be met.	12:26:02	13 A. "Marketing Tools" would not be so different,
12:22:08	14 Q. Page 1612, the next page in the sequence, what	12:26:05	14 just a different version of the same.
12:22:28	15 does it mean when it says under GS, "STR kits for small	12:26:08	15 And "Enhanced Sales Partnership," I'm fairly
12:22:36	16 HID companies," if you know?	12:26:13	16 certain reflected an interest to work more closely with
12:22:43	17 A. GS is genetic systems, which actually leads to	12:26:19	17 the sales organization in terms of OEM opportunities.
12:22:47	18 a correction of something I said earlier. The name of	12:26:23	18 There's an inherent conflict sometimes between direct
12:22:50	19 the division in which applied markets was in this year	12:26:27	19 sales and OEM sales.
12:22:55	20 was GS, genetic systems, not applied markets division.	12:26:29	20 Q. Understood.
12:23:00	21 Q. Thank you.	12:26:30	21 Did the website build-out happen?
12:23:01	22 A. So these four titles are the four divisions in	12:26:35	22 A. Arguably, yeah, like any website, I mean the
12:23:06	23 2009, 2010, MBS.	12:26:39	23 website was enhanced.
12:23:10	24 Q. Why don't you tell us what each one means	12:26:44	24 Q. Spoken like a biotech guy as opposed to an IT
12:23:14	25 again so that I get it accurate.	12:26:50	25 guy. I understand.

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12:26:53	1 Then page 1613, which is the next page in this	12:30:53	1 likely to close out in the coming year. It was the
12:26:56	2 sequence, I assume that the categories we saw on 1611,	12:30:58	2 result of a complicated and not fully informed set of
12:27:07	3 they appear to be the same categories here and that,	12:31:03	3 decisions -- set of analysis.
12:27:13	4 therefore, the definitions we talked about would be	12:31:05	4 Q. Well said.
12:27:15	5 equally applicable, to the best of your recollection?	12:31:05	5 Is the .5, do you have any recollection of the
12:27:20	6 A. After a perusal, under the best of my	12:31:09	6 .5 other than the potential for proportionality? Was
12:27:24	7 recollection, they would be referring to the same	12:31:13	7 there any other thinking in that number, as you recall?
12:27:26	8 categories.	12:31:23	8 A. You know, I can think of some things that it
12:27:35	9 Q. Now, I'll ask you to interpret. What does it	12:31:25	9 might have been, but I don't recall the exact equation
12:27:44	10 mean by "Potential Upside Savings and Totals," so if I'm	12:31:29	10 that got me to .5.
12:27:53	11 trying to understand this slide?	12:31:31	11 Q. What about down below? I see in the CS
12:28:01	12 A. Ask your question.	12:31:34	12 division, it has HID. And, again, I'm not trying to
12:28:02	13 Q. Can you explain what is meant by "Potential	12:31:37	13 intrude upon a confidential issue here. I assume HID
12:28:05	14 Upside Savings and Totals" in the slide at 1613?	12:31:42	14 refers to human identification, and then it shows a
12:28:19	15 A. I'm just recalling my thoughts, my memories.	12:31:45	15 savings of 5, presumably 5 million.
12:28:23	16 Q. The other ones, they do match up with the	12:31:49	16 What is that referring to, if you remember?
12:28:26	17 prior slide. That's the reason that I'm asking about	12:31:52	17 That's a fairly big number.
12:28:29	18 those three.	12:32:13	18 A. I'm trying to recall. That was GS, not CS
12:28:32	19 A. This is, I guess, would be somewhat related to	12:32:17	19 division you're reading. The bottom goes up.
12:28:34	20 the flogging that I was talking about earlier. I mean,	12:32:20	20 Q. Thank you.
12:28:37	21 there were a set of numbers put forth, 206.8 as the	12:32:33	21 A. I can think of more than one reason it might
12:28:43	22 rollup from the group. There was a desire to see it be	12:32:36	22 have. I don't recall what reason it was.
12:28:47	23 more successful than that, hence the gap.	12:32:39	23 Q. Can you tell us some of those reasons, then?
12:28:50	24 Q. Hence the 216 shown down there at the bottom?	12:32:44	24 A. One of those reasons is the same --
12:28:54	25 A. The target.	12:32:45	25 Q. Is the subject of the problem. Okay.
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12:28:54	1 Q. Yep.	12:32:50	1 A. The other reason could have been Promega, the
12:28:55	2 A. And so there was a second exercise to think	12:32:53	2 dispute between the companies, but I don't know for
12:28:57	3 about what was, you know -- what was on the horizon and	12:32:55	3 certain that that was the basis for that number. There
12:29:04	4 could be reason -- maybe we were feeling cautious about	12:32:59	4 were two reasons that I can think of.
12:29:06	5 putting it into the initial forecast but that you can	12:33:05	5 Q. Yeah, fine.
12:29:11	6 connect and commit to, for various reasons, commit to in	12:33:16	6 Then the 1614, the last page of this
12:29:16	7 the coming year, additional revenue.	12:33:20	7 document --
12:29:23	8 Savings would be where there was an	12:33:23	8 A. I'm sorry, just to add to my last question.
12:29:26	9 opportunity to save money and, you know, not revenue per	12:33:25	9 There were two reasons that I could think of.
12:29:31	10 se, but a cost savings through some effort.	12:33:28	10 But again, just to clarify, I was not responsible for
12:29:34	11 And then total is the math from 2011 totals,	12:33:30	11 this group. There could have been other reasons that
12:29:39	12 plus potential upside and plus savings, because it was	12:33:32	12 I'm not thinking of.
12:29:45	13 designed to be a, what is the contribution of this	12:33:34	13 Q. Who would have been responsible for that
12:29:49	14 group, what could the contribution of this group be in	12:33:36	14 group? The GS division, is that the right --
12:29:52	15 the coming year.	12:33:41	15 A. That would have been a combination of
12:30:07	16 Q. So focusing, then, on where it says "Molecular	12:33:43	16 Dr. Singer I mentioned before and Mr. Krueger that I
12:30:10	17 Reagents has Potential Upside, 0.5." Do you recall what	12:33:47	17 mentioned before. Todd Krueger and Vicki Singer.
12:30:17	18 that refers to -- I mean, first of all, potential	12:33:58	18 Q. The last page, 1614 down there, what does this
12:30:21	19 upside, what was the basis to believe there would a	12:34:09	19 mean when it says "555K," which I assume is 555,000,
12:30:25	20 potential upside?	12:34:13	20 "investment will result from a 5.7 million in 2011
12:30:29	21 A. I was responsible for this group at this time,	12:34:19	21 revenue." What's that referring to?
12:30:32	22 and I was given a requirement to put a larger number,	12:34:28	22 A. Just reviewing to make sure that my
12:30:36	23 and to a large extent, I distributed it, as I recall, to	12:34:29	23 recollection is correct. I believe the math is correct,
12:30:44	24 some extent -- to some extent proportionally to what was	12:34:34	24 that that's the sum of the numbers on the cost column.
12:30:50	25 there and to the opportunities that I saw as being	12:34:38	25 Q. Got it.

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12:34:40	1	A. And the sum of the numbers on the dollars	12:39:30	1	used in exhibits in other matters -- other depositions
12:34:43	2	column. It's a request for additional resources.	12:39:33	2	in this case.
12:35:01	3	Q. When it says in the 4.0 million GS, it says	12:39:42	3	You participated in the negotiation of those
12:35:07	4	"Full-time OL Resources," what does that mean? "OL,"	12:39:42	4	agreements; is that right? Those being Exhibit 5 and
12:35:12	5	what does that mean?	12:39:46	5	Exhibit 6.
12:35:15	6	A. I'm thinking. In the context of this	12:39:47	6	A. I did.
12:35:21	7	document, there's a chance I'm wrong, but I'm reasonably	12:39:54	7	Q. Who else participated in the negotiation of
12:35:24	8	sure that it's OEM licensing. So a person who it's been	12:39:57	8	those?
12:35:32	9	dedicated to either out-licensing OL or OEM and	12:39:58	9	MS. JOHNSON: On the Applera side --
12:35:36	10	licensing.	12:40:05	10	MR. TROUPIS: On the Applera side,
12:35:38	11	Q. Yeah. I see in the last column it says	12:40:05	11	Applied Biosystems, yes.
12:35:41	12	"Dependence on External factors." That would make	12:40:05	12	THE WITNESS: You headed off my answer.
12:35:44	13	sense, that you could control the factors in allocating	12:40:10	13	Elan Foistvagn, who we mentioned before, was
12:35:48	14	a resource. When we say "low," is that sort of a fair	12:40:14	14	at the table. In some cases Paul Grossman was there. I
12:35:52	15	definition of that?	12:40:22	15	don't remember every day of the negotiation. Probably
12:35:53	16	A. Right. If you're hiring someone, there's less	12:40:23	16	there might have been a patent attorney present. But
12:35:57	17	dependence on external factors than say marketing.	12:40:26	17	Elan and I were the ones most often there, to the best
12:36:02	18	Q. Right.	12:40:30	18	of my recollection.
12:36:29	19	And that's exhibit what?	12:40:33	19	MR. TROUPIS: Q. And who had designated you
12:36:31	20	THE REPORTER: Five.	12:40:34	20	to be there? Who had directed you to be there with
12:36:31	21	(Whereupon, Exhibit 5 was marked for	12:40:38	21	them?
12:36:31	22	identification.)	12:40:39	22	A. Mr. Grossman.
12:36:41	23	MR. TROUPIS: Then this will be Exhibit 6.	12:40:40	23	Q. So you were -- you were answering directly to
12:36:43	24	(Whereupon, Exhibit 6 was marked for	12:40:43	24	Mr. Grossman during this time period about this
12:36:43	25	identification.)	12:40:46	25	negotiation -- on this negotiation?
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12:37:16	1	MR. TROUPIS: Q. Dr. Moehe, I'll show you	12:40:48	1	A. On this negotiation, definitely, yes.
12:37:18	2	what has been marked Exhibit 5, which is a settlement	12:40:53	2	Q. What interaction, if any, did you have with
12:37:22	3	agreement. And then next to that is Exhibit 6, which is	12:40:55	3	Cathy Bersic, the signatory on here?
12:37:28	4	a cross-license. You'll notice there's some printing	12:41:03	4	A. More limited interaction, occasionally giving
12:37:31	5	across the top of that cross-license, Exhibit 6, that is	12:41:05	5	an update. I did not give that many updates, though,
12:37:35	6	actually a file stamp number from the Federal District	12:41:09	6	directly to her. A couple, I don't remember how many.
12:37:38	7	Court for the Western District of Wisconsin, and that's	12:41:17	7	Q. Is it fair to say this was a lengthy
12:37:41	8	why it has that number on it.	12:41:19	8	negotiation?
12:37:44	9	Let's start with Exhibit 5. Do you recognize	12:41:23	9	A. Define "lengthy."
12:37:46	10	Exhibit 5, without reviewing each and every page? Each	12:41:24	10	Q. More than a few months.
12:38:06	11	and every word, I should say.	12:41:27	11	A. It was more than a few months.
12:38:10	12	A. Without reviewing every word, every page, this	12:41:52	12	Q. And, again, the reason I'm hesitating is I'm
12:38:13	13	would appear to be a copy of the settlement agreement	12:41:55	13	not trying to get into legal advice that occurred at the
12:38:20	14	between Promega and Applera or ABI. It is similar to	12:41:57	14	time, during this time period, although Elan was a
12:38:30	15	the copy in my possession in that there's only a	12:42:02	15	lawyer; is that right?
12:38:35	16	signature for one of the parties, so it is not	12:42:04	16	A. And still is.
12:38:39	17	officially the settlement agreement.	12:42:10	17	Q. The negotiations continued on a face-to-face
12:38:45	18	Q. And then the next item, Exhibit 6,	12:42:12	18	basis as well as by email and other forms of
12:38:51	19	cross-license, do you recognize that document?	12:42:14	19	communication between Promega and Applied Biosystems; is
12:39:12	20	A. In the same way, in a cursory examination, it	12:42:19	20	that right?
12:39:14	21	looks like the cross-license that is fully executed	12:42:21	21	A. Sorry, I lost track of your question.
12:39:18	22	between the parties.	12:42:23	22	Q. During the time period that we just talked
12:39:19	23	Q. And I'll represent to you that Exhibit 5 and	12:42:26	23	about when this negotiation was going on, there were
12:39:22	24	Exhibit 6 are, my understanding as well, settlement	12:42:29	24	face-to-face meetings as well as emails and other
12:39:26	25	agreement and cross-license agreement. They have been	12:42:32	25	communications, such as letters and the like, as part of

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12:42:35	1 the process of negotiation?	12:46:16	1 for Invitrogen prior to the merger who have seen these
12:42:36	2 A. Correct. I don't recall any letters per se,	12:46:20	2 documents.
12:42:38	3 but emails, phone calls, face-to-face.	12:46:31	3 Q. Traci Libby has been given access to these
12:42:57	4 Q. When did you communicate the -- these	12:46:35	4 documents, hasn't she?
12:43:02	5 documents, if you communicated these documents, to your	12:46:36	5 A. It is my understanding that Traci Libby has
12:43:09	6 merger partners, Invitrogen, if you know?	12:46:39	6 access to these documents.
12:43:15	7 A. I have no knowledge.	12:47:06	7 Q. And no permission was, to your knowledge, ever
12:43:18	8 Q. Was there a time that they requested copies of	12:47:09	8 requested of Promega to share these documents with
12:43:21	9 these documents from you?	12:47:13	9 former Invitrogen employees; is that right?
12:43:23	10 A. I have no knowledge.	12:47:18	10 A. To my knowledge -- I have no knowledge of
12:43:36	11 Q. Was there any attempt to maintain these	12:47:19	11 whether any permission was asked to share these
12:43:39	12 documents as confidential from Invitrogen after the	12:47:23	12 documents with former or current employees.
12:43:46	13 merger had taken place, the former Invitrogen employees?	12:47:25	13 Q. And that's fair. Let me phrase it slightly
12:43:53	14 A. So after the merger was effective and we were	12:47:28	14 different.
12:43:56	15 one company?	12:47:29	15 Each of these documents contains a
12:43:57	16 Q. Yes.	12:47:31	16 confidential provision; is that right?
12:44:02	17 A. Was there any effort made to keep documents	12:47:35	17 A. I believe so. I would want to double-check,
12:44:06	18 confidential from other members of the company?	12:47:37	18 but I'll take your stipulation if you're offering it.
12:44:08	19 Q. Right.	12:47:42	19 Q. You do not have any knowledge of either
12:44:09	20 A. I'm not aware of a barrier based on the, you	12:47:46	20 Applied Biosystems or Life Technology ever requesting
12:44:12	21 know, the historical company that the employees had came	12:47:49	21 permission from Promega pursuant to the confidentiality
12:44:14	22 from. There's always confidentiality that you don't	12:47:53	22 agreement to share these documents with anyone, do you?
12:44:18	23 give a document like this to everyone.	12:48:00	23 A. I am not aware of any request for permission
12:44:22	24 Q. But there was no attempt to keep these matters	12:48:04	24 to share these documents.
12:44:27	25 confidential from any of the former Invitrogen employees	12:48:05	25 Does that answer your question?
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12:44:30	1 who might otherwise be involved in out-licensing, was	12:48:08	1 Q. No, I think it does.
12:44:37	2 there, to your knowledge?	12:48:14	2 It is now 10 minutes to 1:00. We had a number
12:44:38	3 A. If there was -- I mean, I am not aware of any	12:48:18	3 of breaks this morning, but let's take a break now for
12:44:42	4 effort.	12:48:22	4 lunch, and we can be back here at 1:45. I don't have a
12:44:55	5 Q. Was any permission ever requested of Promega	12:48:27	5 clue where you eat around here.
12:45:09	6 to share these documents with Invitrogen or Invitrogen	12:48:29	6 THE VIDEOGRAPHER: Going off the record. The
12:45:13	7 IP Holdings, to your knowledge?	12:48:31	7 time is 12:48 p.m.
12:45:16	8 A. I have no knowledge of this.	12:48:33	8 (Noon recess taken.)
12:45:24	9 Q. It is fair to say, isn't it, that former	14:01:58	9 THE VIDEOGRAPHER: We're back on the record.
12:45:27	10 Invitrogen employees have had access to those documents	14:02:01	10 The time is 2:01 p.m.
12:45:33	11 since the merger; is that right?	14:02:05	11 MR. TROUPIS: Q. Dr. Moeble, I've shown you
12:45:36	12 MS. JOHNSON: Objection. Lack of foundation.	14:02:06	12 what is marked Exhibit 6 for identification -- Exhibit 7
12:45:41	13 THE WITNESS: What do you mean by "former"?	14:02:11	13 for identification.
12:45:43	14 MR. TROUPIS: Q. Presumably some people came	14:02:12	14 (Whereupon, Exhibit 7 was marked for
12:45:45	15 over from Invitrogen to your company?	14:02:12	15 identification.)
12:45:48	16 A. Current Life Technology employees?	14:02:15	16 MR. TROUPIS: Q. It is a license agreement of
12:45:49	17 Q. Yes.	14:02:17	17 the 19th of June, 1996, between Research Genetics and
12:45:49	18 A. Rephrasing that way, could you just state the	14:02:24	18 Promega. The numbers across the top again indicate this
12:45:52	19 question again.	14:02:28	19 is actually filed with the Federal District Court for
12:45:53	20 Q. Sure. Were -- these documents were shared	14:02:31	20 the Western District of Wisconsin, and other witnesses
12:45:56	21 with former Invitrogen employees subsequent to the	14:02:34	21 have testified already that this is the Research
12:46:00	22 merger; is that right?	14:02:37	22 Genetics agreement.
12:46:04	23 A. Is that -- again I have trouble with the	14:02:39	23 Have you seen this document before?
12:46:05	24 "former," but to my knowledge, there are -- there are	14:02:44	24 A. I believe that I have seen this document
12:46:14	25 appropriate Life Technology employees who used to work	14:02:46	25 before.



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14:02:46	1	<b>Q.</b> When was the first time that you did see it?	14:07:36	1	numbers that we've been talking about at the bottom,
14:02:55	2	<b>A.</b> I don't recall the precise date, but it was	14:07:38	2	Exhibit 8 is 770, Exhibit 10 is 771, and then Exhibit 9
14:02:57	3	some point after the merger. I just don't recall	14:07:49	3	is Exhibit 779.
14:03:00	4	exactly when.	14:07:58	4	And the exhibit to you, the first of those,
14:03:10	5	<b>MR. TROUPIS:</b> Let me show you -- let's mark --	14:08:01	5	Exhibit 8, refers to the Max Planck research genetic
14:03:19	6	well, mark this as 8 and 9.	14:08:07	6	license, and you'll notice that the document I've given
14:03:24	7	(Whereupon, Exhibits 8 & 9 were marked for	14:08:11	7	you, Exhibit 10, is between Research Genetics and -- and
14:03:24	8	identification.)	14:08:24	8	there's an attached 1993 agreement.
14:04:13	9	<b>MR. TROUPIS:</b> Q. Look at Exhibit 8 and	14:08:30	9	So my question to you is, do you recall that
14:04:13	10	Exhibit 9, which appear to be emails, one to you -- at	14:08:33	10	document? We have two licenses, a 1993 agreement,
14:04:18	11	least headed from someone named Chen to you --	14:08:38	11	Exhibit 10, and a 1996 agreement, which is Exhibit 7.
14:04:25	12	<b>A.</b> Chow Lee.	14:08:55	12	<b>A.</b> I'm sorry, what was your question again?
14:04:28	13	<b>Q.</b> Chow Lee Chen to you, and then there is a --	14:08:57	13	<b>Q.</b> Do you recall this document as distinct from
14:04:37	14	and then there's an email from Chow Lee Chen to Stewart	14:09:01	14	the other license, Exhibit 7? Exhibit 10 and Exhibit 7,
14:04:43	15	Hepburn, which reflects the transfer of a Promega	14:09:16	15	I'm asking you to compare.
14:04:49	16	license.	14:09:21	16	<b>A.</b> I don't recall if I've seen Exhibit 10 or not.
14:04:49	17	So you can look at each of those and see if	14:09:25	17	I'm just not certain. I may have or I may not. I don't
14:04:53	18	you recall -- there's an email under that, and you can	14:09:28	18	place it. I'm a little confused, though, that at the
14:04:58	19	see these are sequential.	14:09:33	19	top, it says 1993, but it's signed with a date a few
14:05:00	20	<b>A.</b> There's two pages?	14:09:39	20	weeks or a month before the other 1996 documents.
14:05:01	21	<b>Q.</b> I think so.	14:09:43	21	<b>Q.</b> In fact, this document, IVGN771, is a
14:05:02	22	<b>A.</b> Paper is a little thick. I wasn't sure.	14:09:50	22	September -- refers to a license agreement which is
14:05:13	23	<b>Q.</b> In the second exhibit, 9, direct your	14:09:54	23	attached of September 6, 1993, and is an amendment to
14:05:15	24	attention to the bottom email. The others follow.	14:09:58	24	that document.
14:05:22	25	<b>A.</b> Okay.	14:10:00	25	<b>A.</b> Okay.
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14:05:59	1	<b>Q.</b> So now back to the question that led me to	14:10:03	1	<b>Q.</b> But as it came from IVGN, that's why I
14:06:02	2	handing these to you, which was simply, when, if you	14:10:07	2	provided it to you, and it appeared to have the same --
14:06:07	3	were called, was the first time you would have seen	14:10:09	3	it appeared to potentially be the document that's
14:06:12	4	Exhibit 7, which was the June 19, 1996, agreement?	14:10:12	4	attached to 770, Exhibit 8.
14:06:19	5	<b>A.</b> To be honest, I don't recall these specific	14:10:18	5	<b>A.</b> I may have seen this, but I don't recall it.
14:06:22	6	emails. I don't deny them. I just don't recall them	14:10:21	6	At the moment, it does not appear familiar.
14:06:25	7	clearly.	14:10:34	7	<b>Q.</b> The second, Exhibit 9, I'd like you to focus
14:06:26	8	This makes sense. The timing would have been	14:10:38	8	on, if you would, the first paragraph. It says, "Hi,
14:06:29	9	after what we call day one, the effective date of the	14:10:43	9	Stewart, I talked to Charlie Moehle this afternoon.
14:06:32	10	merger, and the two sides were trying to get operating	14:10:47	10	He's totally fine that we take care of this subject from
14:06:35	11	as one side. So this would be consistent, but --	14:10:53	11	Invitrogen's side."
14:06:37	12	<b>Q.</b> But the general time period in which you	14:10:55	12	Can you explain to me what you -- what would
14:06:40	13	probably would have seen this, December 4. I'm not	14:10:58	13	have been this subject? He's reflecting on a
14:06:43	14	trying --	14:11:01	14	conversation he had with you.
14:06:45	15	<b>A.</b> Yeah. It certainly was not before that, but I	14:11:04	15	<b>MS. JOHNSON:</b> Objection. Lack of foundation.
14:06:48	16	couldn't say if -- this looks reasonable.	14:11:11	16	<b>THE WITNESS:</b> I don't -- I mean, the subject
14:06:51	17	<b>MR. TROUPIS:</b> Let me show you one other	14:11:15	17	at this time on the calendar, I don't know exactly what
14:06:52	18	document, which I also think is related to this, so that	14:11:19	18	she was referring to.
14:06:57	19	we don't end up with an incomplete record on this	14:11:24	19	<b>MR. TROUPIS:</b> Q. Do you know what role did
14:07:01	20	question.	14:11:25	20	Stewart Hepburn play in reviewing the Promega agreements
14:07:03	21	Mark that as Exhibit 10.	14:11:33	21	that you had forwarded earlier that same day, according
14:07:05	22	(Whereupon, Exhibit 10 was marked for	14:11:38	22	to Exhibit 9?
14:07:05	23	identification.)	14:11:41	23	<b>A.</b> I don't know precisely what role Stewart
14:07:32	24	<b>MR. TROUPIS:</b> Q. So I've shown you what is	14:11:43	24	played in evaluating these agreements.
14:07:33	25	marked Exhibit 10, and you'll notice that the Bates	14:11:46	25	<b>Q.</b> Do you know what role --



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14:11:51	1 A. Chow Lee.	14:16:15	1 Exhibit 6. Ask you to state in your own words what your
14:11:54	2 Q. -- Chow Lee would have had?	14:16:24	2 understanding of this net sales provision is.
14:11:56	3 A. Not exactly. She was in one of the licensing	14:16:27	3 And I point out to counsel that he has been --
14:12:01	4 groups, out-licensing groups, but other than that.	14:16:30	4 you were designated under Rule 26 as a witness with
14:12:04	5 Q. Previously with Invitrogen?	14:16:35	5 regard to the execution and terms of the 2006
14:12:06	6 A. Yes. I had business dealings with her at a	14:16:38	6 cross-license, so I ask that question.
14:12:12	7 prior company.	14:16:42	7 MS. JOHNSON: And you're asking him to answer
14:12:14	8 Q. Did you subsequently have any conversations	14:16:44	8 with respect to the entirety of paragraph 1.9?
14:12:15	9 with Stewart Hepburn regarding the Promega agreements in	14:16:47	9 MR. TROUPIS: Yes.
14:12:19	10 the year 2008 or at or about that time period?	14:16:47	10 Q. And take whatever length of time you like to
14:12:31	11 A. I don't recall specific timing and whether the	14:16:50	11 explain that provision.
14:12:34	12 conversation was with Stewart. Any conversation I had	14:16:52	12 A. Okay. Let me take a minute and just read it.
14:12:38	13 on this topic would have been with attorneys or in the	14:16:57	13 Q. Certainly.
14:12:42	14 context of a legal discussion.	14:17:35	14 A. So if you're ready.
14:12:52	15 Q. With regard to Chow Lee, would that same	14:17:36	15 Q. Please, please.
14:12:55	16 answer apply, that you had no -- do you recall any	14:17:38	16 A. Starting at a high level, this is a definition
14:12:58	17 discussions with Chow Lee about these Promega documents	14:17:41	17 of net sales, which is the basis upon which a royalty
14:13:03	18 after December 4, 2008, during that next year period?	14:17:45	18 would be calculated in the license.
14:13:11	19 A. Let's think, I'm just being careful. I don't	14:17:49	19 There is three main parts, again at a high
14:13:15	20 remember when it started, but there were some committee	14:17:53	20 level. First part, part A, this relates to what we
14:13:19	21 meetings, if you will, under the direction of the	14:17:58	21 might call ordinary sales, plain sales.
14:13:22	22 attorneys. I'm thinking whether I ever had any	14:18:02	22 Category B is a category of special sales,
14:13:26	23 conversations with her that was not under the direction	14:18:06	23 where there's reason to doubt that -- or to question
14:13:29	24 of an attorney. And I can't recall any.	14:18:10	24 that the price reflects the value of the item.
14:13:36	25 Q. Was the committee that you're referring to the	14:18:14	25 And then the third section, which is not
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14:13:37	1 GOLC committee?	14:18:17	1 lettered, is what to do if the value of the royalty item
14:13:38	2 A. No.	14:18:21	2 is confused by being part of a larger assembly, if you
14:13:40	3 Q. What committee?	14:18:25	3 will, and how do you back out the value that should be
14:13:41	4 A. Just a group, a couple of attorneys evaluating	14:18:30	4 royalty bearing.
14:13:44	5 the situation. Committee just in the sense of more than	14:18:32	5 Would you like me to go into more detail or is
14:13:47	6 two people at a table.	14:18:35	6 that --
14:14:01	7 Q. Let's look, then, at Exhibit 7, marked for	14:18:37	7 Q. That's good enough for the moment. Let me ask
14:14:04	8 identification the license agreement, June 19, 1996.	14:18:39	8 you a couple of follow-up questions rather than
14:14:10	9 And I'd like to focus on section 1.11.	14:18:42	9 rereading it all.
14:14:16	10 In your own words, what is your understanding	14:18:43	10 One question is, is the -- does the net sales
14:14:43	11 of the net sales of license product definition in 1.11	14:18:52	11 from the perspective of the party reporting the royalty,
14:14:49	12 of Exhibit 7?	14:19:00	12 paying the royalty, does that net sales include foreign
14:14:54	13 MS. JOHNSON: Object to the extent that it	14:19:08	13 sales, sales off-site of the United States?
14:14:55	14 lacks foundation.	14:19:13	14 A. In this license?
14:14:56	15 And also caution you not to divulge the	14:19:15	15 Q. Yes.
14:15:10	16 content of any conversations you may have had with	14:19:46	16 A. Now that I've read it, can you just restate
14:15:13	17 counsel regarding that paragraph. To the extent -- and	14:19:50	17 your question.
14:15:17	18 understanding independent of any such conversations, you	14:19:51	18 MR. TROUPIS: Why don't we reread it.
14:15:19	19 can answer.	14:20:11	19 (Record read by the reporter.)
14:15:29	20 THE WITNESS: As I read this paragraph, I	14:20:14	20 THE WITNESS: To some extent I would call that
14:15:34	21 don't know that I could give an answer that was	14:20:16	21 an incomplete question, in the sense that this doesn't
14:15:36	22 independent of discussions with my counsel.	14:20:21	22 read on the issue of whether it's in the U.S. or outside
14:15:49	23 MR. TROUPIS: Q. Let's go back, then, to	14:20:24	23 the U.S. Without that limitation, as you're talking
14:15:52	24 Exhibit 6. I think you have it there to your right.	14:20:29	24 only of net sales, you would have to assume worldwide
14:16:11	25 What is -- and I'm focused on section 1.9 of	14:20:33	25 unless some other part of the agreement gave you a

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14:20:36	1	restriction otherwise.	14:25:46	1	it again.
14:20:37	2	MR. TROUPIS: Q. Are there other parts of the	14:25:53	2	Could you reread the question one more time.
14:20:38	3	agreement that do restrict it otherwise, to your	14:26:37	3	(Record read by the reporter.)
14:20:39	4	knowledge?	14:26:56	4	THE WITNESS: So in reading this letter, I
14:20:41	5	A. I would have to read through carefully.	14:26:56	5	think the purpose of the letter would be largely
14:20:46	6	Do you want me to look?	14:26:59	6	contained in the second to last paragraph.
14:20:47	7	Q. Yes, yes, if it would help you answer that	14:27:03	7	"We firmly request Promega's prompt attention
14:20:51	8	question.	14:27:07	8	into this matter, including payment of outstanding
14:20:53	9	A. So in the cross-license agreement,	14:27:10	9	amounts due, which are articulated above in the letter,
14:20:58	10	affiliates -- be easier with a computer to search for	14:27:13	10	in correction of this issue going forward."
14:21:34	11	terms.	14:27:20	11	MR. TROUPIS: Q. Were you involved in the
14:22:07	12	So in the example of this, the cross-license,	14:27:23	12	preparation of this letter?
14:22:10	13	there's a term often explicitly stated that I don't see,	14:27:24	13	A. I believe so -- yes. Not I believe so. Yes.
14:22:14	14	which is "territory." Often you'll see territory is	14:27:30	14	Q. Did you, in fact, revise various drafts of
14:22:18	15	U.S., worldwide, et cetera. However, the licensed	14:27:34	15	this letter as you were going through -- as it was being
14:22:23	16	patents include all of the foreigners, as far as I can	14:27:39	16	prepared?
14:22:27	17	tell. I'm not a patent attorney.	14:27:40	17	MS. JOHNSON: To the -- and I would caution
14:22:28	18	And so the opportunity to infringe is	14:27:41	18	the witness again not to the divulge communications with
14:22:32	19	theoretically worldwide, and the valid claims	14:27:45	19	counsel to the extent that the question can be answered
14:22:37	20	definition, 117, does not limit to U.S. A valid claim	14:27:48	20	without doing so.
14:22:45	21	could be international under that definition, and so the	14:27:50	21	THE WITNESS: I can't point to a specific
14:22:51	22	payment of royalties does not limit to the U.S.	14:27:51	22	change, but I believe I participated in a review of this
14:22:53	23	So I would come to the conclusion that if the	14:27:54	23	and probably made suggestions.
14:22:57	24	patent coverage were appropriate, there would be	14:27:57	24	MR. TROUPIS: Q. Was this before you took on
14:23:01	25	international payments. And so it would come back to an	14:28:03	25	the position you now fill, described a little bit
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14:23:06	1	analysis of the patent claims and the products.	14:28:08	1	earlier, as solving strategic settlements?
14:24:35	2	Q. Okay, thank you.	14:28:14	2	A. Yes. This is October 20, 2009.
14:24:35	3	What number are we up to?	14:28:16	3	Q. So at that time what was your position?
14:24:38	4	THE REPORTER: This is 11.	14:28:22	4	A. I was senior director of business development
14:24:39	5	(Whereupon, Exhibit 11 was marked for	14:28:27	5	at that time, working in the MBS division.
14:24:39	6	identification.)	14:28:34	6	Q. In October of 2009, had the GOLC committee or
14:24:49	7	MR. TROUPIS: Q. I've shown you what is	14:28:40	7	group been formed?
14:24:50	8	marked as Exhibit 11 for identification, which is a	14:28:42	8	A. Yes.
14:24:52	9	letter dated October 20, 2009. Again, you'll notice	14:28:43	9	Q. Was this the result, in part, of discussions
14:24:57	10	that the heading contains the letters or -- from the	14:28:47	10	that took place in that committee?
14:25:01	11	Western District of Wisconsin. We mentioned that	14:28:52	11	MS. JOHNSON: By "this" --
14:25:03	12	before. So this is an exhibit in those proceedings.	14:28:53	12	MR. TROUPIS: Q. By "this" I mean Exhibit 11.
14:25:08	13	And it's a letter directed to Promega Corporation,	14:28:57	13	A. It's kind of sometimes difficult to parse, but
14:25:12	14	signed by Traci Libby.	14:29:01	14	I would say no. The proper answer here is no.
14:25:14	15	And I'll ask you first, have you seen this	14:29:04	15	Q. Was it not discussed at that committee? "It"
14:25:18	16	before?	14:29:08	16	being that a letter would be sent to Promega about an
14:25:18	17	A. I believe so.	14:29:16	17	underpayment.
14:25:20	18	Q. What is your understanding of what it is --	14:29:23	18	A. You know, I have to say that I don't remember
14:25:23	19	what is the purpose of this letter?	14:29:25	19	each detail of each meeting. I would expect that in a
14:25:26	20	MS. JOHNSON: And, again, I would caution you	14:29:29	20	regular update meeting there would be a mention that the
14:25:27	21	not to divulge any communications that you may have had	14:29:32	21	letter was going out or something to that effect,
14:25:31	22	with counsel. To the extent that you can answer the	14:29:35	22	because it would have been one of the projects, members
14:25:34	23	question without disclosing such communications, you may	14:29:38	23	of the committee, that had some attention.
14:25:43	24	do so.	14:30:02	24	(Whereupon, Exhibit 12 was marked for
14:25:44	25	THE WITNESS: Give me a moment to read through	14:30:02	25	identification.)

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14:30:11	1 MR. TROUPIS: Show you what has been marked as	14:40:04	1 And by "augment" we mean increase the revenue
14:30:14	2 Exhibit 12 for identification, and it appears to be an	14:40:07	2 from that?
14:30:18	3 email -- a sequence of emails.	14:40:07	3 A. Yes, increase.
14:30:20	4 Q. You'll again notice there's a Bates number on	14:40:12	4 Q. Up above on that same page, 1986, there is a
14:30:23	5 the lower right-hand side, this time IVGN1983 through	14:40:16	5 conclusion of a long email from you to Vicki Singer and
14:30:30	6 1986.	14:40:21	6 others that begins on page 1984 and ends on 1986, and
14:30:32	7 And if you'll turn, please, to the final page	14:40:28	7 the last paragraph says, "I am curious/concerned about
14:30:36	8 of that, which is 1986, the salutation from Vicki Singer	14:40:32	8 the bullet regarding the" -- half a quote -- "new
14:30:46	9 is, "Dear GOLC members," and on page 1983 in that same	14:40:39	9 diagnostic division."
14:30:57	10 sequence is a discussion of Promega's underpayment.	14:40:41	10 What were you referring to there, "new
14:31:07	11 Can you take a minute to review the entire	14:40:45	11 diagnostic division"?
14:31:09	12 email, please.	14:40:50	12 A. Similar to when we were talking about the
14:31:10	13 A. Sure. Start from the back.	14:40:54	13 other presentation. There was an aspiration to be more
14:35:36	14 Q. Have you had a chance to review it?	14:40:57	14 into diagnostics, and building up there was a small
14:35:39	15 A. Not all the way.	14:41:00	15 effort that was -- aspiration we built up into a larger
14:35:42	16 Q. Okay.	14:41:05	16 effort.
14:37:34	17 A. Okay.	14:41:05	17 Q. Did that ever happen? Was there ever a new
14:37:42	18 Q. Let me focus first on page 1986, which is the	14:41:09	18 diagnostic division?
14:37:47	19 last page, which is the emails run -- this is actually	14:41:11	19 A. A hard question to answer, because we don't
14:37:51	20 first in the sequence, and there's an email dated	14:41:14	20 have divisions now. But there has been continued
14:37:55	21 August 19, 2009, that I mentioned earlier.	14:41:17	21 interest in diagnostics in our company and increased
14:38:02	22 Now, I would like to focus on the second to	14:41:21	22 investment in diagnostics.
14:38:04	23 last -- third to last paragraph, because the way they	14:41:23	23 Q. And where does that occur within the company?
14:38:08	24 got it numbered there, that starts out "I am	14:41:25	24 Are the products directed to the diagnostic area in a
14:38:11	25 anticipating." And the sentence continues, "I am	14:41:29	25 single area of the company, single division, referred to
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14:38:15	1 anticipating a presentation where we focus on the size	14:41:33	1 as droops and divisions and markets, so I apologize if
14:38:19	2 of the gap, recognizing that the conservative SRI plans	14:41:37	2 I'm not as clear. But where would funds be placed to
14:38:24	3 fill much but not all of it, and then show that we've	14:41:43	3 develop diagnostics?
14:38:28	4 identified a number of interesting opportunities that	14:41:46	4 A. It's a matter of definitions. It's hard to
14:38:31	5 could not only fill this gap but also enable the company	14:41:50	5 answer your question.
14:38:34	6 as a whole to grow rapidly but that there is a	14:41:51	6 Q. So is clinical diagnostics funded in multiple
14:38:38	7 significant risk involved."	14:41:58	7 areas of the company?
14:38:40	8 What is your understanding of "fill this gap"?	14:42:01	8 MS. JOHNSON: Objection. Lack of foundation
14:38:47	9 What gap it being referred to there? What did you	14:42:02	9 and vague and ambiguous.
14:38:50	10 understand it to mean?	14:42:05	10 It may be helpful if you specify what products
14:39:00	11 A. It's slightly ambiguous. It refers, though,	14:42:08	11 you're talking about.
14:39:04	12 in a way, to the gap between either the royalty revenues	14:42:12	12 MR. TROUPIS: Q. You know, does
14:39:09	13 that we obtained last year and were likely to obtain in	14:42:14	13 Life Technologies market certain products to clinical
14:39:12	14 the following year, or it may more specifically refer to	14:42:18	14 diagnostics?
14:39:16	15 a gap between what management wanted and what we were	14:42:20	15 A. Does Life Technologies market certain products
14:39:20	16 saying we could deliver. Reading this, I'm not a	14:42:23	16 to clinical diagnostic -- to clinical diagnostic
14:39:22	17 hundred percent sure which, but I think it was the	14:42:29	17 companies?
14:39:24	18 former.	14:42:30	18 Q. Clinical diagnostic companies.
14:39:26	19 Q. Okay. In either one of those, the gap is	14:42:37	19 A. I'm just having trouble parsing out the right
14:39:34	20 the -- in either one of those, the purpose is to find a	14:42:39	20 way to answer your question, because we do a lot of
14:39:43	21 way to reduce the losses of revenue from licenses.	14:42:44	21 different kinds of business. We have announced, for
14:39:53	22 We've been talking about that before.	14:42:49	22 instance, a collaboration with GSK, maybe a year ago
14:39:57	23 A. Perhaps more appropriately augment the revenue	14:42:54	23 where we would work with them, I don't remember the
14:40:00	24 from the licensing group.	14:42:57	24 details of the announcement, but it's a diagnostics
14:40:02	25 Q. Okay. That's fair.	14:43:00	25 collaboration. We sell a thermal cyclor to Abbott

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14:43:04	1	Laboratories that we OEM to them for their diagnostics	14:46:50	1	our HID business."
14:43:11	2	divisions.	14:46:50	2	What was "this" that you're referring to?
14:43:11	3	<b>Q.</b> So various products are, fair to say, are sold	14:47:10	3	<b>A.</b> It would be resolution of the dispute with
14:43:16	4	by various parts of the company to clinical diagnostic	14:47:13	4	Promega.
14:43:23	5	companies?	14:47:21	5	<b>Q.</b> And so the peanut butter reference here is
14:43:39	6	<b>A.</b> If I could rephrase your question.	14:47:25	6	Promega, which I find entertaining in itself, but I'm
14:43:43	7	<b>Q.</b> Please do.	14:47:29	7	just asking, is that the reference that you're referring
14:43:45	8	<b>A.</b> Clinical diagnostic companies often buy a	14:47:30	8	to?
14:43:46	9	variety of products from us that come from different	14:47:31	9	<b>A.</b> I believe so, yes.
14:43:50	10	parts of the company.	14:47:46	10	<b>Q.</b> Then the following up to page 1984, so we're
14:43:51	11	<b>Q.</b> There's no one division focused on clinical	14:47:50	11	kind of going in reverse order, but the proper time
14:43:54	12	diagnostics. Is that a fair statement?	14:47:53	12	sequence order, Todd Krueger writes back to you and
14:43:57	13	<b>A.</b> I don't think so. I apologize for being a	14:48:01	13	talks about, "I would like to discuss your comments on
14:44:04	14	stickler, but we don't have divisions. So there's no	14:48:05	14	slide 11, as it would undoubtedly irritate those in
14:44:09	15	divisions. But I think what you're asking is a	14:48:11	15	Genetic Systems, especially Peter, Lenny and Kip." And
14:44:11	16	department, a group or something. There is a part of	14:48:17	16	then the last sentence, "If such a decision has been
14:44:13	17	the company that focuses exclusively on clinical uses,	14:48:19	17	made, who made it and when?"
14:44:18	18	but that's not the entirety of my company's interest in	14:48:22	18	And I isolate those two. The first is, who
14:44:23	19	that field.	14:48:26	19	are Peter, Lenny, and Kim?
14:44:24	20	<b>Q.</b> What department is that? What department is	14:48:31	20	<b>A.</b> Peter is Peter Christy, C-H-R-I-S-T-Y; Lenny
14:44:31	21	that?	14:48:41	21	is Lenny Kleven, K-L-E-V-E-N; and Kip Miller,
14:44:33	22	<b>A.</b> I don't know the title. I mean --	14:48:49	22	M-I-L-L-E-R.
14:44:38	23	<b>Q.</b> How would you expect me to, then?	14:48:52	23	<b>Q.</b> Mr. Krueger is reflecting --
14:44:41	24	Who heads that department?	14:48:55	24	<b>A.</b> Krueger.
14:44:47	25	<b>A.</b> It's probably Kim Caple, C-A-P-L-E. If she's	14:48:56	25	<b>Q.</b> I apologize.
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14:44:54	1	not the head, she works for the head or, you know, I	14:48:57	1	Krueger, I apologize.
14:44:56	2	don't know the precise structure.	14:48:57	2	-- quote, "It will undoubtedly irritate those
14:45:00	3	<b>Q.</b> What products do they sell in that department	14:49:01	3	in Genetics Systems" and then names those people.
14:45:04	4	or market?	14:49:01	4	Why did he believe it would irritate them, if
14:45:05	5	<b>A.</b> It's more about development at this stage,	14:49:04	5	you know?
14:45:08	6	looking to develop clinical diagnostic tests, also with	14:49:09	6	<b>A.</b> At the time, my understanding was that they
14:45:15	7	the instrumentation software, just the equipment needed	14:49:13	7	were assuming that any resolution would result in
14:45:18	8	to do clinical diagnostics.	14:49:19	8	ongoing benefit to their sales organization.
14:45:20	9	<b>Q.</b> So do they have -- they don't formally sell	14:49:28	9	<b>Q.</b> So why would they, then, be irritated? Was
14:45:24	10	products at this point from that -- assigned to that	14:49:32	10	there going to be -- did slide 11 suggest that it would
14:45:27	11	department?	14:49:36	11	go somewhere else?
14:45:27	12	<b>A.</b> I don't know what is assigned -- what sales	14:49:39	12	<b>A.</b> Yes.
14:45:30	13	are assigned to their group versus other groups. Just	14:49:39	13	<b>Q.</b> That the statement is a revenue play for the
14:45:38	14	to add -- we talked about the Abbott Laboratories. We	14:49:43	14	MBS division?
14:45:43	15	sell them a thermal cycler that they then sell in a	14:49:44	15	<b>A.</b> Yes.
14:45:47	16	diagnostic space. I don't know if Kim Caple's group	14:49:44	16	<b>Q.</b> So these were two different divisions within
14:45:56	17	gets credit for those sales or a different group gets	14:49:48	17	the company?
14:45:59	18	credit for those sales. I'm not part of the marketing	14:49:49	18	<b>A.</b> Yes.
14:46:02	19	or sales organization.	14:49:56	19	<b>Q.</b> And then the next email in the sequence, the
14:46:05	20	<b>Q.</b> Yeah, where is Kim located?	14:49:59	20	one above that beginning on 1983 through 1984,
14:46:09	21	<b>A.</b> In the Bay Area, this campus.	14:50:20	21	consistent with what you just said, paragraph beginning,
14:46:20	22	<b>Q.</b> Going back to your email, email from you to	14:50:23	22	"Let's talk about it tomorrow. My position is that we
14:46:23	23	Vicki Singer that begins on 1984 and continues to 1986.	14:50:26	23	need to do what generates the best value for the
14:46:34	24	There's a slide 11 on 1985, and it says, "As we've	14:50:30	24	company, but please keep in mind that the license from
14:46:44	25	discussed before, this deal is very unlikely to impact	14:50:34	25	Life to Promega is part of my product line, and I will

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14:50:38	1	be a key stakeholder in how this plays out."	15:10:13	1	<b>Q.</b> So he was the person at Invitrogen before the
14:50:40	2	Is that a reference to the MBS division, that	15:10:17	2	merger? When you said "his group," would he have come
14:50:45	3	the revenue would be attributed to them? Is that what	15:10:22	3	over from Invitrogen?
14:50:48	4	you were referring to there?	15:10:27	4	<b>A.</b> Coincidentally, yes, he did come over from
14:50:50	5	<b>A.</b> Close. I was referring to the fact that the	15:10:30	5	Invitrogen, but at the merger, I mean, it didn't
14:50:53	6	revenue under the license is attributed to us. So if	15:10:33	6	necessarily matter where you had been before.
14:50:56	7	the revenue changed, if there was an increase in payment	15:10:36	7	<b>Q.</b> I wasn't trying to imply that. You had
14:50:59	8	to make up for past underpayment, my logic was it would	15:10:40	8	mentioned it was where the payments had resided.
14:51:03	9	go to the same place as the primary royalty stream.	15:10:43	9	<b>A.</b> So the business that he ran after the merger
14:51:11	10	<b>Q.</b> It also says the license from Life to Promega.	15:10:45	10	was the business that received the royalties from that
14:51:15	11	So at this point in time, the license was the 2006	15:10:49	11	license. That's the --
14:51:24	12	license or the 1996 license, which one were you	15:10:52	12	<b>Q.</b> That's the -- I apologize.
14:51:29	13	referring to?	15:10:54	13	Who are Phoebe White and Rolando Brawer?
14:51:33	14	<b>A.</b> In this case it didn't matter, to be honest,	15:10:58	14	<b>A.</b> Rolando was one of my reports. He was a
14:51:36	15	but it was more apropos to the 1994.	15:11:02	15	legacy Invitrogen employee. He's still with the
14:51:39	16	<b>Q.</b> '6.	15:11:05	16	company. His group, his smaller group, was also the one
14:51:40	17	<b>A.</b> '6 license, yes.	15:11:10	17	that had managed that license prior to the merger and
14:51:43	18	<b>Q.</b> Okay.	15:11:13	18	after the merger.
14:51:45	19	<b>A.</b> Any license from us to Promega would have been	15:11:16	19	And Phoebe White was a legacy
14:51:47	20	in my royalty stream.	15:11:24	20	Applied Biosystems Applera employee. At that time I
14:51:51	21	<b>Q.</b> That's my understanding as well.	15:11:27	21	believe she was Peter's chief of staff, kind of helped
14:51:56	22	Now, I'm going to take a break because they're	15:11:32	22	him -- she was an executive with the company, but she
14:51:58	23	going to switch tapes. So we can take a break right now	15:11:36	23	was his right hand. I think that was her role at that
14:52:03	24	for just a quick five-minute break while they do that,	15:11:40	24	time. She had changed roles a few times in the company.
14:52:06	25	if you like.	15:11:45	25	<b>Q.</b> The email immediately above that is an email
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14:52:08	1	MS. JOHNSON: Sure.	15:11:53	1	to Charles Piazza from Rolando Brawer. And it says
14:52:09	2	THE VIDEOGRAPHER: This marks the end of Video	15:11:58	2	Chuck, so that's to Mr. Piazza?
14:52:10	3	2 in the deposition of Charles M. Moehle. Going off the	15:12:00	3	<b>A.</b> Yes.
14:52:13	4	record. The time is 2:22 p.m.	15:12:01	4	<b>Q.</b> He makes a reference, and if you know, it says
14:52:16	5	(Recess taken.)	15:12:04	5	"This one" -- "This was one of the particular matters I
15:09:05	6	THE VIDEOGRAPHER: We're back on the record.	15:12:08	6	wanted to discuss with you, and Vicki's meddling in our
15:09:06	7	Here marks the beginning of Video 3 in the deposition of	15:12:12	7	business."
15:09:10	8	Charles M. Moehle. The time is 3:09 p.m.	15:12:12	8	Do you have any idea who Vicki is in that
15:09:16	9	MR. TROUPIS: <b>Q.</b> Dr. Moehle, we were working	15:12:17	9	reference?
15:09:18	10	on -- working through Exhibit 12, marked for	15:12:18	10	<b>A.</b> That's Vicki Singer, Dr. Singer.
15:09:23	11	identification, and I just have a couple more questions	15:12:33	11	(Whereupon, Exhibit 13 was marked for
15:09:27	12	on it.	15:12:33	12	identification.)
15:09:28	13	On page 1983 marked for identification, the	15:12:38	13	MR. TROUPIS: <b>Q.</b> See, after I made that
15:09:33	14	very first page, there is an email from you to Charles	15:12:40	14	comment about not having enough exhibits, I just thought
15:09:37	15	Piazza and Peter Danski. Who are Charles Piazza and	15:12:44	15	I'd make a Pete Carroll and tell him I didn't have
15:09:40	16	Peter Danski?	15:12:48	16	enough exhibits.
15:09:42	17	<b>A.</b> Peter Danski was my boss in 2009 and 2010.	15:12:49	17	This is Exhibit 13.
15:09:47	18	<b>Q.</b> Is this one of the seven people?	15:12:55	18	I've handed you what's been marked as
15:09:50	19	<b>A.</b> No, he wasn't one of them.	15:12:57	19	Exhibit 13, Doctor, and it shows -- it appears to be an
15:09:52	20	And then Chuck, Charles Piazza, Chuck Piazza	15:13:01	20	email from you to Peter Danski, dated September 8, 2009.
15:09:54	21	was one of my peers reporting to Peter Danski. He was	15:13:11	21	And it says, "Pete, I wanted to touch base with you on
15:10:01	22	the head of the business group that collected the	15:13:17	22	three issues." And the second issue there is STRs.
15:10:04	23	royalties from the original 1996. So it was his	15:13:21	23	Do you recall this email?
15:10:08	24	business that would be affected by an increase or	15:13:23	24	<b>A.</b> Not precisely, but more or less.
15:10:11	25	decrease in that royalty stream.	15:13:28	25	<b>Q.</b> Okay. This appears to be much of the same



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15:13:36	1	discussion, and I'm not putting words into your mouth,	15:17:01	1	MR. TROUPIS: Q. So I've handed you the
15:13:38	2	but I didn't -- it says in that STR paragraph you say,	15:17:04	2	Exhibit 14 marked for identification, which is IVGN1621
15:13:42	3	"he seems pretty clear the ResGen IBGN license to	15:17:12	3	to 1622. Again, it's a sequence of emails.
15:13:49	4	Promega should be transferred to GS division."	15:17:25	4	You start at the back end. It sequences
15:13:50	5	What is that a reference to, the GS division?	15:17:29	5	chronologically.
15:13:55	6	A. As we discussed earlier, genetic systems	15:17:30	6	A. Would you like me to read it?
15:13:59	7	division, which is where Peter Christy worked.	15:17:33	7	Q. Yes, please.
15:14:05	8	Q. Was it ever transferred to the GS division?	15:18:04	8	A. Okay.
15:14:09	9	A. I'm pretty sure it was not, and now we don't	15:18:06	9	Q. Starting with the first in the sequence, which
15:14:12	10	talk about divisions.	15:18:08	10	is on page 1622, there is a phrase that says, "On the
15:14:19	11	Q. Is there a GS department?	15:18:16	11	Promega sublicense, that would need to be eliminated
15:14:26	12	A. I don't know that you can make a one-to-one	15:18:20	12	intercompany between legacy IVGN and AB applied market.
15:14:28	13	mapping or not.	15:18:24	13	Right now our estimate is about 200,000, 200K,
15:14:29	14	Q. Who was -- and you may have answered this	15:18:27	14	elimination for this quarter."
15:14:32	15	earlier today. Where was the ResGen license to Promega	15:18:30	15	What is that -- can you explain that to us?
15:14:40	16	trans -- where is it now housed within the company, what	15:18:32	16	What does it mean by "the legacy" and what does it mean
15:14:46	17	department has responsibility for it?	15:18:40	17	by "elimination"?
15:14:49	18	MS. JOHNSON: Object to the extent that it	15:18:41	18	A. Yes, I can explain that.
15:14:50	19	lacks foundation.	15:18:43	19	Q. Yes, please, explain that.
15:15:02	20	THE WITNESS: Regardless of how you refine the	15:18:47	20	A. Prior to the merger, Invitrogen again received
15:15:04	21	question, I think I don't know the answer with	15:18:51	21	a revenue stream from Promega that was probably 300,
15:15:07	22	certainty. Over the last year, I have a different role	15:18:55	22	\$400,000 a year, on that ballpark, may not be exactly
15:15:10	23	and I don't pay as much attention.	15:19:04	23	the right number.
15:15:13	24	MR. TROUPIS: Q. Okay. Is that the same	15:19:05	24	When we started after the merger, at the
15:15:19	25	answer with regard to the 2006 license, cross-license?	15:19:07	25	beginning of 2009, my group and any group had a revenue
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15:15:28	1	A. The cross-license, yeah. I don't know	15:19:12	1	target, and the revenue target was built up from what
15:15:37	2	precisely who, but I think that's a moot point. I don't	15:19:16	2	you had done the prior year. So part of my revenue
15:15:42	3	know if -- frankly, I don't know if there's any revenue	15:19:20	3	target for 2009 was an amount roughly equal to what
15:15:45	4	coming in under the cross-license, so I don't know the	15:19:25	4	Promega had paid to Invitrogen in 2008.
15:15:48	5	answer.	15:19:31	5	After the year started, as the accountants
15:15:48	6	Q. That's fine.	15:19:35	6	went through the books here and there, they determined
15:15:49	7	The last sentence refers to "convince AJ." Do	15:19:38	7	that they needed to be conservative. And if one company
15:15:53	8	you know who that AJ is?	15:19:43	8	paid the corporation and received money from the
15:15:55	9	A. Sorry, where?	15:19:45	9	corporation under the same transaction that it might be
15:15:57	10	Q. The last sentence of this email, Exhibit 13.	15:19:49	10	construed as a round-trip for SEC purposes and that it
15:16:03	11	MS. JOHNSON: And I caution you not to divulge	15:19:54	11	needed to be netted against each other and whatever the
15:16:06	12	communication -- I understand, I think you can answer	15:19:57	12	impact would on the company's books.
15:16:08	13	the question as he phrased it.	15:19:59	13	So my department lost two -- looks like
15:16:10	14	THE WITNESS: Yeah, I think he's -- I won't	15:20:02	14	\$200,000 in revenue that we were still accountable for.
15:16:12	15	say. AJ is a reference to the same paragraph. It's	15:20:10	15	Q. And that appears to be the topic all the way
15:16:16	16	analytic jana.	15:20:13	16	through this?
15:16:22	17	MR. TROUPIS: Q. Oh, okay.	15:20:14	17	A. Yes. That is that chain.
15:16:29	18	MS. JOHNSON: You surprised us both.	15:20:17	18	Q. Now, I understand what Promega STR round-trip
15:16:32	19	THE WITNESS: Yeah, I know. I could tell. I	15:20:21	19	means. Thank you.
15:16:33	20	could have played you along.	15:20:30	20	(Whereupon, Exhibit 15 was marked for
15:16:36	21	MR. TROUPIS: Q. I couldn't not ask the	15:20:30	21	identification.)
15:16:39	22	question.	15:20:42	22	MR. TROUPIS: Q. I've handed you what's been
15:16:52	23	This is Exhibit 14.	15:20:44	23	marked Exhibit 15 for identification. Again, it appears
15:16:55	24	(Whereupon, Exhibit 14 was marked for	15:20:47	24	to be an email from you to Rolando Brawer and Susan
15:16:55	25	identification.)	15:20:51	25	Cole, dated November 3, 2009, and it's a sequential

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15:20:57	1	email at the bottom. The first email is October 30,	15:24:56	1	we saw a little bit earlier, but it's actually from
15:21:02	2	2009.	15:25:02	2	2008. My apologies, because it's out of sequence from
15:21:03	3	Do you recall this -- you can look at it and	15:25:08	3	what we were discussing.
15:21:05	4	I'll ask, do you recall this?	15:25:10	4	But my focus here, this appears to be during
15:21:15	5	A. Yeah, more or less I remember this.	15:25:13	5	that time period we did discuss earlier when the
15:21:22	6	Q. It appears -- we've been talking about the SR2	15:25:16	6	agreements are being exchanged from you to --
15:21:26	7	and the SR1 process and the GOLC process.	15:25:24	7	A. Chow Lee.
15:21:34	8	The second email here is from Rolando to you	15:25:25	8	Q. -- Chow Lee.
15:21:38	9	and it says, "Are you going to allocate some of the	15:25:27	9	And it -- there's a -- second to the last of
15:21:41	10	7.6 million to an eventual payment by Promega for sales	15:25:34	10	the emails 12/5/2008, 522.
15:21:45	11	prior to the merger?"	15:25:42	11	And it says "Hi, Charlie, do you know the name
15:21:48	12	And I noticed that it's titled "SR2	15:25:44	12	of the person at ABI that is responsible for paying
15:21:52	13	Presentation."	15:25:48	13	royalty to Promega?" And then it's -- there's a
15:21:55	14	Can you explain what was being referred to	15:25:53	14	description provided by Chow Lee of the agreement.
15:21:57	15	here in this particular sentence in the email?	15:26:03	15	And then you say, "Peter should own this" at
15:22:00	16	A. Yes.	15:26:06	16	the top. Is that Peter Christy?
15:22:00	17	Q. Okay. Please do.	15:26:08	17	A. Yes, whom I copied on the email.
15:22:04	18	A. So again, the context was the SR2 process. We	15:26:16	18	Q. Do you know if there was contact at this point
15:22:08	19	had built a bottoms-up forecast of what we thought we	15:26:19	19	in time with Max Planck regarding the ability to pay an
15:22:12	20	would do in the following year. And at the SR2	15:26:26	20	amount directly to Max Planck?
15:22:16	21	presentation, we were told everything is great, good	15:26:29	21	A. I'm sorry, regarding?
15:22:19	22	work, take 7.6 and add it to your number. So that was	15:26:31	22	Q. I'll quote the sentence. It says, "So
15:22:23	23	the 7.6.	15:26:33	23	moving" -- and this is in the second email in the
15:22:27	24	And so then it was left up to us to find a way	15:26:36	24	sequence. "So moving forward after 2009,
15:22:30	25	to earn more money. And Rolando was just asking me, you	15:26:38	25	Life Technologies can pay 2 percent to Max Planck
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15:22:35	1	know, where we were allocating the amount and he was	15:26:43	1	directly instead of 5.5 percent to Promega."
15:22:40	2	asking specifically would any of that come from	15:26:48	2	Do you recall that there were discussions with
15:22:43	3	settlement perhaps with Promega under the Tautz,	15:26:50	3	Max Planck at or about this time concerning this mat --
15:22:50	4	T-A-U-T-Z, issue. And he's referring specifically to	15:26:56	4	the matter addressed in this email?
15:22:56	5	sales prior to the merger, back royalties.	15:27:00	5	A. I do not recall. I know there had been
15:22:58	6	Q. Okay. Thank you for explaining that.	15:27:03	6	discussions with Max Planck, but I don't know when they
15:23:01	7	What is the -- did this then -- was this then	15:27:06	7	started.
15:23:04	8	added into a document under the SR2 or a similar	15:27:08	8	Q. Do you know why Chow Lee had come to the
15:23:12	9	document as an amount?	15:27:10	9	conclusion that -- why you could pay 2 percent to
15:23:17	10	A. At this time when I got this challenge, if I	15:27:16	10	Max Planck directly instead of 5 percent to Promega?
15:23:21	11	remember correctly, I called it aspirational, meaning	15:27:32	11	A. Not really. I mean, I could try to infer,
15:23:27	12	that I didn't have a direct line to it, but we had to	15:27:36	12	meaning that I'd be speculating.
15:23:30	13	fill it. At some point in the year, as we did updates	15:27:39	13	Q. You don't know whether there was or wasn't a
15:23:33	14	on our revenues, I don't recall whether Promega Tautz,	15:27:42	14	meeting at this point in time, 2008?
15:23:37	15	as it's listed there, was ever listed as a specific	15:27:45	15	A. Correct. I do not know if there was or wasn't
15:23:41	16	target for revenue or not. I don't recall.	15:27:49	16	a meeting with Max Planck at that date.
15:23:46	17	Q. Okay. Thank you.	15:27:54	17	Q. Has there been any separate agreement entered
15:23:51	18	(Whereupon, Exhibit 16 was marked for	15:27:56	18	into with Max Planck that they would accept 2 percent in
15:23:51	19	identification.)	15:27:58	19	settlement of the obligations under that 1996 agreement?
15:24:31	20	MR. TROUPIS: Exhibit 15?	15:28:05	20	MS. JOHNSON: And I would caution the witness
15:24:33	21	THE REPORTER: 16.	15:28:07	21	not to divulge any communications with counsel.
15:24:34	22	MR. TROUPIS: Q. I've shown you, Doctor,	15:28:09	22	MR. TROUPIS: And I'm not asking that.
15:24:36	23	what's been marked as Exhibit 16 for identification,	15:28:10	23	MS. JOHNSON: If you can answer without doing
15:24:38	24	again a series of emails from page 850 to 852 on the	15:28:12	24	so, then you may answer.
15:24:50	25	Bates numbers. This actually is a continuation of one	15:28:17	25	THE WITNESS: Even if there's confidentiality?

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15:28:23	1	MS. JOHNSON: I think --	15:31:35	1	marked for identification, a May 4, 2010, demand for
15:28:24	2	Counsel, perhaps it would make sense for us to	15:31:38	2	arbitration from Life Technologies from Promega
15:28:26	3	return to this document later on, or we can confer about	15:31:46	3	Corporation signed by Traci Libby.
15:28:30	4	it now. I think the concern would be --	15:31:47	4	And my question to you is, have you seen this
15:28:32	5	MR. TROUPIS: And I'm not trying to open up	15:31:49	5	before?
15:28:34	6	whole new avenues.	15:31:50	6	A. I think so.
15:28:35	7	Speaking of that, I had asked about the HID	15:31:58	7	Q. Did you participate in the drafting of this
15:28:37	8	Roche question. What have you determined?	15:32:00	8	letter?
15:28:40	9	MS. JOHNSON: And we can come back to that	15:32:02	9	A. I may have, but I don't recall for sure. My
15:28:42	10	whenever you like. The concern with that particular	15:32:06	10	involvement in this case was not every step in every --
15:28:45	11	sentence, and just to be clear, we should probably refer	15:32:10	11	so I don't recall for sure.
15:28:50	12	on the record to the document that raises the question.	15:32:22	12	Q. Were you -- given your position at the time in
15:28:53	13	Deposition Exhibit 4.	15:32:24	13	the company in May 2010, was your approval required
15:29:07	14	MR. TROUPIS: Yes.	15:32:32	14	before this demand for arbitration can be sent by Traci
15:29:07	15	MS. JOHNSON: And I believe that the reference	15:32:35	15	Libby?
15:29:08	16	was on page 4.	15:32:50	16	A. That's a -- not formally.
15:29:11	17	MR. TROUPIS: That's correct.	15:32:54	17	Q. But as part of your responsibilities with your
15:29:12	18	MS. JOHNSON: Control No. 1612 of that	15:33:05	18	position, you did participate in the decision-making to
15:29:14	19	document. The concern is apparently at this time, there	15:33:11	19	issue the demand for arbitration, didn't you?
15:29:19	20	were ongoing discussions between Roche and	15:33:16	20	A. I believe so, yes.
15:29:22	21	Life Technologies regarding the resolution of various	15:33:33	21	Q. Back to the 2006 agreement, which is -- is
15:29:26	22	disputes. There were confidentiality agreements with	15:33:43	22	that Exhibit 5? Yes, Exhibit 5.
15:29:28	23	Roche regarding those discussions. And so the concern	15:34:14	23	Following the signing of Exhibit 5, the
15:29:31	24	is any disclosure of the content could potentially be in	15:34:16	24	cross-license agreement, you and Dr. Dimond had a number
15:29:36	25	violation of those confidentiality agreements. It's a	15:34:23	25	of discussions; is that right?
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15:29:40	1	confidentiality concern, I believe, more than a	15:34:27	1	A. Following the signing?
15:29:42	2	privilege concern.	15:34:30	2	Q. After the signing.
15:29:47	3	MR. TROUPIS: Let's think about that. We are	15:34:34	3	A. Sitting here today, I don't recall.
15:29:50	4	under protective order, but by the same token, I don't	15:34:36	4	Q. Oh, by the way, now Dimond can come back.
15:29:54	5	particularly want people to have to get into problems	15:34:40	5	We're going to talk about the discussions you and he
15:29:57	6	they don't need to get into.	15:34:45	6	had.
15:29:59	7	MS. JOHNSON: And I understand the protective	15:34:46	7	MS. JOHNSON: And, for the record, we'll
15:30:01	8	order. I simply have not seen the confidentiality	15:34:49	8	designate the entire portion after Dr. Dimond and
15:30:05	9	agreement at issue. Typically disclosure would not be	15:34:51	9	Mr. Ghoca left the room as attorneys' eyes only up to
15:30:06	10	allowed absent consent or a court order.	15:34:57	10	this point.
15:30:09	11	MR. TROUPIS: And why don't we -- and I'll --	15:35:01	11	MR. TROUPIS: That's fine.
15:30:11	12	let's leave that, then, we've left it on the record,	15:35:01	12	(End attorneys' eyes only portion.)
15:30:14	13	that we may follow up with a written question with	15:37:08	13	(Discussion off the record.)
15:30:17	14	regard to that after you've made that determination.		14	
15:30:20	15	MS. JOHNSON: That might be a better way to		15	
15:30:22	16	handle it.		16	
15:30:23	17	MR. TROUPIS: So we don't need to force the		17	
15:30:27	18	question today. I don't want to do that, as much as I		18	
15:30:31	19	find litigating with Roche entertaining. Not half as		19	
15:30:49	20	entertaining as Applied Biosystems.		20	
15:31:07	21	(Whereupon, Exhibit 17 was marked for		21	
15:31:07	22	identification.)		22	
15:31:14	23	MR. TROUPIS: What number are we on?		23	
15:31:17	24	THE REPORTER: 17.		24	
15:31:32	25	MR. TROUPIS: Q. I've handed you Exhibit 17		25	

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15:37:09	1 THE VIDEOGRAPHER: Back on the record. The	15:41:52	1 It's Exhibit 5.
15:37:09	2 time is 3:37 p.m.	15:42:15	2 A. And your question again?
15:37:10	3 (Whereupon, Exhibit 18 was marked for	15:42:16	3 Q. What's your understanding about AB's
15:37:10	4 identification.)	15:42:21	4 obligations to continue to have its -- to continue to
15:37:12	5 MR. TROUPIS: Q. Doctor, I've shown you what	15:42:30	5 provide assurances that Promega's reagents will be
15:37:15	6 has been marked Exhibit 18 for identification. It is a	15:42:34	6 usable on ABG instrumentation?
15:37:18	7 sequence of emails, beginning with a lengthy email from	15:42:44	7 A. My understanding is that there was an
15:37:22	8 Dr. Randall Dimond of January 7, 2007, and then a	15:42:46	8 agreement that an instrument -- without specifically --
15:37:27	9 responding email from you on January 8, 2007. I'll ask	15:42:51	9 Q. And that's why I was asking you in a general
15:37:30	10 you to review that. I wanted to ask you a few questions	15:42:53	10 way.
15:37:35	11 about this email exchange that you and Dr. Dimond had.	15:42:55	11 A. -- that an instrument -- one of ABI's
15:38:42	12 A. Okay.	15:43:00	12 instruments would be kept on the market that was
15:38:47	13 Q. Do you recall this email?	15:43:03	13 compatible with Promega chemistries. This was a heavily
15:38:52	14 A. Not really. Not in any detail.	15:43:09	14 negotiated point, very important to Promega, as part of
15:38:55	15 Q. Do you recall the matter being raised in the	15:43:11	15 the cross-license and settlement.
15:38:58	16 email a lot about this time?	15:43:14	16 Q. And to your knowledge, has ABG continued to
15:39:04	17 A. It's kind of -- I don't really remember.	15:43:19	17 abide by that provision?
15:39:10	18 Q. In the email from Dr. Dimond, he is talking	15:43:25	18 A. I am not so directly -- I mean, my knowledge
15:39:13	19 about the definition in the 2006 cross-license, and he's	15:43:28	19 is not very detailed of whether we did or not. I saw in
15:39:24	20 talking -- and he makes references to the fact that	15:43:31	20 what you provided me that Dr. Dimond was raising a
15:39:27	21 there apparently has arisen a dispute between the two	15:43:35	21 concern that we were not apparently, in his mind, living
15:39:32	22 companies, Promega and Applied Biosystems, about whether	15:43:38	22 up to our obligations.
15:39:35	23 or not certain combination products should have factored	15:43:40	23 Q. I didn't mean it to imply some answer.
15:39:42	24 out some nonlicensed portions of those products.	15:43:45	24 Is it your understanding that ABG continues to
15:39:49	25 And that was the substance of the email, the	15:43:48	25 believe that it has the obligation to provide the
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15:39:54	1 email exchange.	15:43:53	1 assurances that you just described?
15:39:55	2 Do you recall how this resolved?	15:43:55	2 A. For the time period specified in the
15:39:56	3 A. No, I do not.	15:43:57	3 agreement, it is my understanding that we have signed up
15:40:15	4 Q. Do you recall talking to Dr. Dimond about this	15:44:00	4 for that obligation.
15:40:19	5 or anybody at Applied Biosystems about this matter?	15:44:03	5 Q. Do you recall any other conversations with
15:40:22	6 A. Sitting here today, I don't recall this.	15:44:05	6 Dr. Dimond or anyone at Promega concerning that
15:40:40	7 Q. There are two items in this email. The second	15:44:09	7 obligation, that obligation being the instrument --
15:40:43	8 item has to do with the service contracts and AB	15:44:15	8 MS. JOHNSON: Excuse me. After execution of
15:40:49	9 instrumentation.	15:44:16	9 the agreement or?
15:40:51	10 Do you recall the provisions of the 2006	15:44:17	10 MR. TROUPIS: Subsequent to the agreement,
15:40:55	11 agreements that related to AB's instrumentation and the	15:44:17	11 yes.
15:40:59	12 warranties it provided to Promega so that its reagents	15:44:17	12 THE WITNESS: I've lost a little bit of
15:41:06	13 could continue to be used on that instrumentation?	15:44:17	13 track -- with whom?
15:41:10	14 A. I remember the 2006 agreement. I don't	15:44:21	14 MR. TROUPIS: Q. With anyone at Promega, I
15:41:12	15 strictly remember if it was a warranty ownership, but	15:44:24	15 broadened it beyond Dr. Dimond.
15:41:14	16 you know what you're talking about.	15:44:26	16 A. No, I don't recall. I'm not saying I didn't.
15:41:16	17 Q. What was your understanding with regard to	15:44:28	17 I just don't recall at this point.
15:41:19	18 ABI's obligations concerning its instrumentation and	15:44:59	18 (Whereupon, Exhibit 19 was marked for
15:41:24	19 the use of Promega reagents?	15:44:59	19 identification.)
15:41:30	20 A. It's a little bit of a vague question. If you	15:45:18	20 MR. TROUPIS: Q. Doctor, I've shown you what
15:41:33	21 could maybe just clarify more -- I don't have the	15:45:19	21 has been marked as Exhibit 19 for identification. It
15:41:37	22 agreement --	15:45:22	22 begins with a letter of February 2, 2010. And then in
15:41:37	23 Q. Yes, you do. We can look at sections 5.1.	15:45:28	23 sequence, there's an April 29, 2010, letter. These are
15:41:41	24 Actually, it's of the settlement agreement. And I made	15:45:34	24 letters to Promega from Life Technologies and then a
15:41:45	25 reference to the wrong document, so I do apologize.	15:45:40	25 letter of October 28, 2010.

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15:45:47	1 And I'll represent to you that these were	15:49:08	1 Q. Third -- fourth page in. So she refers to
15:45:49	2 letters received by Promega, as I said, from	15:49:15	2 herself as licensing management and contracts
15:45:53	3 Life Technologies or, last instance, Applied Biosystems.	15:49:18	3 compliance.
15:45:59	4 A. Sorry. If I can ask one question.	15:49:19	4 A. Right.
15:46:01	5 Q. Certainly.	15:49:20	5 Q. What is that?
15:46:01	6 A. Why are there no Bates numbers on these?	15:49:22	6 A. That's part of Traci Libby's group. They do
15:46:05	7 Q. Because I couldn't find the Bates-numbered	15:49:25	7 the accounting. They collect the royalties. They see
15:46:10	8 version of these. Not because they haven't been	15:49:28	8 to it that the checks go out on time.
15:46:12	9 provided. These are all documents that came from you,	15:49:30	9 Q. So this -- Lorna, that would be somebody
15:46:13	10 not from us. But they were provided to us, and they are	15:49:35	10 answering to -- within the structure of Traci Libby?
15:46:13	11 contained in our records and have been filed in multiple	15:49:38	11 A. Yes.
15:46:17	12 proceedings. But I do apologize. I simply couldn't	15:49:44	12 Q. Do you know what their role is when it comes
15:46:22	13 find them.	15:49:47	13 to contracts compliance? How they carry out that role?
15:46:25	14 MS. JOHNSON: I'm sorry to interrupt.	15:49:54	14 A. Maybe could you be more specific.
15:46:26	15 Just to clarify, when you say they're	15:49:56	15 Q. Yeah, you know, I'm trying to -- as a
15:46:27	16 documents provided by you?	15:50:00	16 precursor, I'm trying to determine how they go about
15:46:30	17 MR. TROUPIS: By "you" I mean	15:50:03	17 their jobs. And so my question is, when it says
15:46:30	18 Life Technologies or Applied Biosystems. They sent them	15:50:07	18 "contract compliance," do you know how they go about the
15:46:35	19 to us, Promega.	15:50:11	19 process of contract compliance?
15:46:38	20 MS. JOHNSON: Thank you.	15:50:17	20 A. Not in a specific or detailed way.
15:46:38	21 MR. TROUPIS: Q. And let me explain my	15:50:20	21 Q. Do you know in a general way? Let me put it
15:46:40	22 understanding of what these are, and that will be	15:50:23	22 differently. What's your general understanding?
15:46:43	23 helpful for you to answer the questions, and that is	15:50:26	23 A. My general understanding of Lorna's role is
15:46:46	24 that there are payments made on the cross-licenses and	15:50:29	24 along the lines of, like I said a few moments ago, of
15:46:53	25 over time by Life Technologies or Applied Biosystems to	15:50:33	25 checking that the checks come in, checking that the
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15:46:58	1 Promega and for various products.	15:50:37	1 checks go out, writing the letters that accompany them.
15:47:08	2 Those have been corrected from time to time by	15:50:42	2 It's -- my understanding is it's largely bookkeeping.
15:47:13	3 Life Technologies or Applied Biosystems. And these are	15:50:47	3 Q. A bookkeeping or accounting process?
15:47:19	4 some of those corrections referencing the -- referencing	15:50:50	4 A. Checking off the boxes, making sure that the
15:47:25	5 the period in 2009 into 2010. This is when they were	15:50:52	5 machine is running.
15:47:34	6 talked about, but as the directions go to a series of	15:50:54	6 Q. Not a --
15:47:40	7 years, beginning in 2009, we're trying to determine what	15:50:55	7 A. Raising your hand if something is wrong.
15:47:47	8 was the basis of this -- these corrections, and that is	15:50:58	8 Q. In contrast, not a substantive analysis of the
15:47:54	9 my question to you, were you involved in these	15:51:02	9 contracts themselves?
15:48:05	10 corrections --	15:51:03	10 A. I would not expect that of Lorna.
15:48:06	11 A. I believe not. I don't recall a discussion of	15:51:28	11 Q. In that context of this exhibit, 19, who would
15:48:08	12 corrections to Promega. So I don't think I had any	15:51:34	12 internally determine whether a product sales should no
15:48:13	13 involvement in this.	15:51:38	13 longer be reported or royalty should not be paid on a
15:48:15	14 Q. So you don't know what the basis of, then,	15:51:42	14 product?
15:48:18	15 following -- my question is simply that you don't know	15:51:44	15 MS. JOHNSON: At any particular point in time?
15:48:21	16 the basis of these corrections?	15:51:47	16 MR. TROUPIS: Same time period, 2010 -- 2009
15:48:22	17 A. No. Sitting here, I don't recall. If I heard	15:51:50	17 and 2010, actually, is the time period involved.
15:48:27	18 this, it went by me. I don't recall this at all.	15:51:59	18 THE WITNESS: Who would be responsible for
15:48:40	19 Q. Does Lorna Quitarano, does she work with you	15:52:01	19 determining when a product is no longer royalty bearing?
15:48:47	20 or work for you? Obviously, she's an employee.	15:52:04	20 Is that essentially what you're saying?
15:48:50	21 A. Lorna has never worked for me.	15:52:06	21 MR. TROUPIS: Q. Yes.
15:48:54	22 Q. It says it's licensing management and contract	15:52:07	22 A. That would depend a lot on product. It could
15:48:59	23 compliance, that's the second in the sequence, the	15:52:14	23 have come from someone in Traci's -- you know,
15:49:02	24 April 29, 2010, letter --	15:52:16	24 hypothetical, it could have come from someone in Traci's
15:49:06	25 A. I'm sorry, about how many pages?	15:52:21	25 group more senior than Lorna. It could have come from a



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15:52:25	1 patent attorney. It could have come from a product	15:56:09	1 test only."
15:52:28	2 manager asking questions. I'm not sure precisely what	15:56:10	2 And my question, I think the context of this
15:52:31	3 they're referring to.	15:56:14	3 document is who determines the proper wording of
15:52:32	4 <b>Q.</b> In this instance, the products are listed	15:56:20	4 licenses of the type you're seeing here on products sold
15:52:35	5 there. They're the STR products subject to the 2006	15:56:25	5 by Life Technologies or Applied Biosystems?
15:52:46	6 agreement. Would there be a particular person in that	15:56:32	6 <b>A.</b> What time period?
15:52:51	7 instance that you would know would have that level of	15:56:34	7 <b>Q.</b> The present for now.
15:52:55	8 responsibility?	15:56:38	8 <b>A.</b> I don't have certain knowledge, but I believe
15:52:56	9 <b>A.</b> I don't have enough information. I don't know	15:56:40	9 it would largely be Traci Libby's group in conjunction
15:52:59	10 what on here or what the statements were, what the	15:56:46	10 with the patent attorneys, perhaps with input from a
15:53:02	11 reasons were.	15:56:54	11 business development person closer to the product sales.
15:53:10	12 <b>Q.</b> Is there anyone other than Traci Libby who is	15:56:58	12 <b>Q.</b> Now, let's move it back in time. After the --
15:53:12	13 responsible for determining the royalty obligations for	15:57:03	13 signing of the 2006 cross-license, were you involved in
15:53:19	14 the 2006 license agreement, the payments by ABI to	15:57:10	14 the determination of the proper marking of the products;
15:53:27	15 Promega?	15:57:14	15 that is, these also that would be provided with the
15:53:28	16 <b>A.</b> I think ultimately it would be one of the	15:57:19	16 product sold, the STR products?
15:53:30	17 patent attorneys, possibly a transaction attorney, but	15:57:25	17 <b>A.</b> I had more managerial involvement than direct.
15:53:34	18 more likely a patent attorney.	15:57:33	18 <b>Q.</b> At that time who would have been responsible
15:53:44	19 <b>Q.</b> What department now sells these, the products	15:57:35	19 for the license language?
15:53:50	20 under the 2006 agreement, the ones that were listed in	15:57:42	20 <b>A.</b> It would have been the patent attorneys. I'm
15:53:55	21 Exhibit 19, if you know?	15:57:48	21 thinking about -- there was a change, and I'm trying to
15:53:57	22 <b>A.</b> I don't really know their structure. We've	15:57:50	22 remember when the change occurred, 2006. I will just go
15:54:00	23 talked about that a little earlier in the day. I have	15:58:06	23 ahead and give you both answers.
15:54:05	24 no new information.	15:58:08	24 <b>Q.</b> I was going to say why -- I'll get to the
15:54:06	25 <b>Q.</b> And I'm not trying to retread old ground.	15:58:11	25 other one anyways.
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15:54:10	1 <b>A.</b> I have no direct involvement. That's why	15:58:14	1 <b>A.</b> I don't recall when the changeover occurred,
15:54:13	2 I'm --	15:58:16	2 but at the earlier time period, there was a staff of
15:54:46	3 (Whereupon, Exhibit 20 was marked for	15:58:19	3 people that reported to me and they were led by Katie --
15:54:46	4 identification.)	15:58:23	4 at the moment I'm forgetting Katie's last name. She's
15:54:55	5 <b>MS. JOHNSON:</b> Jim, do you have a copy of that?	15:58:29	5 been separated from the company for a while. It will
15:54:57	6 <b>MR. TROUPIS:</b> No. I'm not going to give you a	15:58:32	6 come back to me. And then she had some people under her
15:54:59	7 copy. Yes.	15:58:36	7 that worked more closely with the patent attorneys and
15:55:00	8 <b>THE WITNESS:</b> So as you described before, the	15:58:38	8 the transaction attorneys discussing the labels.
15:55:02	9 headers from the litigation.	15:58:43	9 After that, that group was moved -- was
15:55:03	10 <b>MR. TROUPIS:</b> <b>Q.</b> Yes. And this is showing	15:58:47	10 remained in legal, if you will, and like the rest of my
15:55:04	11 you Exhibit 20 marked for identification. The header	15:58:51	11 group, moved to corporate development, and then I did
15:55:07	12 indicates that it's filed with the Federal District	15:58:54	12 not have the managerial oversight of that group.
15:55:10	13 Court, was filed with the Federal District Court in	15:58:58	13 <b>Q.</b> So shortly after the 2006 agreement, late
15:55:13	14 Madison.	15:59:04	14 2006, 2007, you did have management responsibilities for
15:55:14	15 And I'll represent to you that this is -- it	15:59:08	15 some of the group that made these marketing decisions?
15:55:17	16 came from an internet site for -- it's the user's guide	15:59:11	16 <b>A.</b> I believe so. Again, with the caveat that I
15:55:24	17 for the product involved here, AmpFLSTR Identifier	15:59:15	17 can't remember the precise day of when I no longer did.
15:55:29	18 Direct PCR Amplification kit. It shows a revision date	15:59:18	18 <b>Q.</b> But at some point, and now at least since
15:55:31	19 of October 2011.	15:59:21	19 before the merger, you have not had that responsibility?
15:55:44	20 And I provide this to you in your capacity as	15:59:25	20 <b>A.</b> Correct.
15:55:47	21 a witness for the 2006 license agreement. On the second	16:00:07	21 <b>MR. TROUPIS:</b> If we take a break, we'll come
15:55:52	22 page of this document, there is a limited use label	16:00:09	22 back and I think we'll be able to finish up.
15:55:59	23 license.	16:00:12	23 <b>THE VIDEOGRAPHER:</b> Going off the record. The
15:56:00	24 Do you see that it notes that there, and then	16:00:13	24 time is 4:00 p.m.
15:56:03	25 at the top it says "For research, forensic, or paternity	16:00:16	25 (Recess taken.)

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16:32:17	1 THE VIDEOGRAPHER: Back on the record. The	16:36:39	1 A. If you had printed out a different format, I
16:32:18	2 time is 4:32 p.m.	16:36:43	2 might, more likely not than --
16:32:27	3 MR. TROUPIS: We're back on the record.	16:36:46	3 Q. I tried.
16:32:27	4 Exhibit 16, what is it?	16:36:50	4 A. I recognize concepts in this document. I
16:32:27	5 MS. JOHNSON: I can't remember.	16:36:52	5 can't say -- I can't speak to this individual document.
16:32:27	6 MR. TROUPIS: The question was the resolution	16:37:00	6 You know, the names, I know the names of the people
16:32:29	7 of whether or not we could discuss agreements that might	16:37:02	7 of -- at least some of the column A opportunities.
16:32:33	8 have existed between Max Planck and Life Technologies.	16:37:09	8 Perhaps if you had a more specific question.
16:32:38	9 MS. JOHNSON: And I think there had been a	16:37:12	9 Q. Sure. Well, earlier today you had referred to
16:32:38	10 question pending that I did not allow him to answer. I	16:37:17	10 the AOP designation as -- it was my recollection, as
16:32:42	11 don't recall what it was. He can answer. I don't know	16:37:24	11 part of the budgeting process, but what's your
16:32:43	12 if you want to just restate it.	16:37:28	12 understanding of AOP?
16:32:43	13 MR. TROUPIS: Is there any chance you could	16:37:29	13 A. AOP, again, the acronym is annual operating
16:32:45	14 actually find that question, Mr. Reporter?	16:37:33	14 plan. It's the plan that you're held to for the year.
16:34:25	15 (Record read by the reporter.)	16:37:36	15 It's your goal.
16:34:29	16 THE WITNESS: So I'm reasonably sure we've not	16:37:44	16 Q. Yes, and that's what you had said earlier
16:34:31	17 entered into an agreement for a different royalty rate	16:37:48	17 today. And so when I -- this document, based on the
16:34:34	18 with Max Planck.	16:37:51	18 discussions we've been having during the day today, I
16:34:37	19 MR. TROUPIS: Q. There's no agreement that --	16:37:55	19 look at, for example, item 10 on page 706. And it says
16:34:38	20 is there any agreement in the event of a resolution with	16:37:59	20 "MBS Total," and that would appear to be in the -- your
16:34:43	21 Promega of the ongoing disputes with Promega that you	16:38:04	21 group in which you were a member. And this is a total
16:34:46	22 would pay Max Planck a certain amount of money?	16:38:11	22 of something. I don't know whether it's revenue or
16:34:50	23 MS. JOHNSON: And I would caution you not to	16:38:14	23 license revenue or what it would be.
16:34:52	24 divulge any privileged communications that you may have	16:38:18	24 A. Nor do I. I mean, the categories, MPRPRT is
16:34:54	25 had with counsel. If you can answer the question	16:38:28	25 protein, GEN is genetics, UDG we've talked about before.
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16:34:56	1 without doing that, then you may answer.	16:38:52	1 This is -- you know, this is similar to, if not the
16:34:59	2 THE WITNESS: I'm not aware of any agreement,	16:38:56	2 same, to a relatively complicated model that we would do
16:35:01	3 any contingent agreement.	16:39:00	3 in 2009 and 2010. Partly it's hard because of the
16:35:04	4 MR. TROUPIS: Q. Okay. That's fine. Thank	16:39:07	4 format.
16:35:05	5 you.	16:39:10	5 The overall point of this document was to
16:35:12	6 One other document that I'd like -- let's have	16:39:13	6 track where we are against revenues, what's come in,
16:35:19	7 this marked.	16:39:19	7 what did we think was going to come in, and it was an
16:35:29	8 (Whereupon, Exhibit 21 was marked for	16:39:23	8 attempt to get some granularity to manage the business
16:35:29	9 identification.)	16:39:27	9 of licensing an OEM for the MBS business division that
16:35:30	10 THE WITNESS: In case I forget, when we bring	16:39:32	10 occurred -- that existed at that time.
16:35:32	11 them back in, I wanted to correct one of my earlier	16:39:34	11 Q. And your description there fits my assumption
16:35:35	12 answers also.	16:39:37	12 when I looked at this a minute ago, based on today's
16:35:37	13 MR. TROUPIS: This is Exhibit 21.	16:39:42	13 discussions.
16:35:45	14 Q. Dr. Moehle, I've given you what is labeled as	16:39:43	14 So, for example, when I looked on, again
16:35:47	15 a document IVGN706 to 718. At the upper left-hand of	16:39:45	15 staying on page 706, I see "Revenue Type," and then it
16:35:53	16 the first page, it says "Opportunities Included in AOP."	16:39:51	16 says, "Running Royalties, Settlement, License Fee,"
16:35:57	17 I will tell you that my assumption is that	16:39:59	17 these would appear to be the kinds of resolution that
16:36:00	18 this is an Excel spreadsheet and therefore oftentimes	16:40:04	18 the GOLC group was looking to do in order to raise
16:36:03	19 the way to read it is that you have to literally put	16:40:08	19 revenue.
16:36:08	20 them side-by-side or -- when it prints out or simply	16:40:11	20 Am I assuming correctly?
16:36:12	21 look at the number in the far left-hand column and that	16:40:17	21 A. Your question is complex. Could you refine
16:36:18	22 will repeat for subsequent columns that couldn't fit on	16:40:21	22 it?
16:36:24	23 a single page.	16:40:23	23 Q. Well, when it says "Revenue Type" on page 706,
16:36:34	24 And I'll ask you if you recognize this	16:40:26	24 what does it mean?
16:36:36	25 document.	16:40:27	25 A. That would be a category of revenue. Running

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16:40:31	1 royalties, as you anticipated, is on an existing license	16:44:13	1 A. Yes.
16:40:34	2 or a quarterly payment, typically.	16:44:13	2 Q. What does it mean "Stand-alone PRT Upside,"
16:40:37	3 Settlement would be a resolution of the	16:44:18	3 again "Upside"?
16:40:39	4 dispute.	16:44:34	4 A. Got to be a Mad Magazine fold here.
16:40:40	5 License fee, sometimes when you sign a license	16:44:45	5 I'm having trouble placing stand-alone, but
16:40:43	6 at the beginning, you pay a fee. Sometimes there's an	16:44:48	6 PRT upside would -- PRT upside. PRT was the group, and
16:40:47	7 annual fee.	16:45:04	7 upside was a tracking we would use for, you know, not in
16:40:51	8 Q. And then, for example, we see in the left-hand	16:45:08	8 the forecast, but possibly, so that's upside.
16:40:55	9 column, "Licensee Name" and it indicates, for example,	16:45:15	9 I don't -- looking at this, let me see if I --
16:41:01	10 audits.	16:45:42	10 I don't -- I don't recall a specific meaning to
16:41:03	11 Again, my assumption is based upon your	16:45:45	11 stand-alone. I'm sure at one time I knew it.
16:41:06	12 testimony earlier today that that would have been	16:45:57	12 Q. Okay. That's helpful.
16:41:08	13 something that you would expect to audit, say, Agilent	16:46:00	13 Then on the next page, page 709, next it
16:41:14	14 in 58 and that you're predicting potentially a	16:46:08	14 starts to use different language. It says "New Enzyme
16:41:19	15 settlement and the technology is RTTCSA, whatever that	16:46:11	15 2/year 2014."
16:41:25	16 is?	16:46:16	16 A. Can you give me a row?
16:41:26	17 A. Correct.	16:46:19	17 Q. Column A, row 79.
16:41:28	18 Q. And in the last column, FCST is the category?	16:46:21	18 A. New enzyme, two per year until 2014, slash,
16:41:35	19 A. I'm sorry, where again?	16:46:26	19 I'm sure --
16:41:37	20 Q. It says "Upside."	16:46:29	20 Q. Per.
16:41:41	21 A. Oh, column E, "FCST Forecast."	16:46:30	21 A. These -- well, ask the question.
16:41:45	22 Q. Forecast category, again consistent with what	16:46:32	22 Q. What are they, what would this be referring
16:41:49	23 we had been taking about earlier today. And then if you	16:46:35	23 to, enzyme-kappa?
16:41:52	24 turn to the next page and again staying with, for	16:46:38	24 A. These are likely, you know, some of them I
16:41:56	25 example, Agilent at 58, column F, I think it says "PLG."	16:46:40	25 need to double-check. I was going to say one thing, but
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16:42:05	1 I wonder what that would --	16:46:50	1 I need to check.
16:42:07	2 A. 58, SDS.	16:46:51	2 Q. Check, please.
16:42:09	3 Q. It says "SDS" and above that column heading is	16:46:52	3 A. It says "Running Royalties." Because in B it
16:42:12	4 "PLG."	16:46:59	4 says "Running Royalties," it says to me that these were
16:42:28	5 A. I'm having trouble with the exact acronym. I	16:47:07	5 under -- my initial response was that it was the Roche
16:42:32	6 think P is probably product and G is probably group.	16:47:17	6 PCR enzyme -- enzyme for short, the sublicense of the
16:42:35	7 But more to the point, CPC, SDS, DNZ, in the legacy ABI	16:47:23	7 Roche PCR, but I'm not 100 percent certain of that.
16:42:43	8 business, those were business categories. CPC is core	16:47:31	8 Again, it's hard because of the way this is
16:42:46	9 PCR. So a certain type of PCR would fit in there. SDS	16:47:35	9 pulled apart, but I think that would be the
16:42:52	10 was sequence detection systems. So that tended to be	16:47:37	10 nomenclature.
16:43:09	11 realtime PCR. And DNZ was related to sequencing. I	16:47:42	11 Q. Were these new patents or -- that's why when
16:43:16	12 don't remember the precise acronym.	16:47:48	12 you say "new enzyme," I thought --
16:43:21	13 Q. And then the next three -- four columns, the	16:47:50	13 A. No. I think "new" refers to new licenses.
16:43:25	14 quarters of the year, and then the total appears to be	16:47:52	14 "Enzyme" referred to the category. Sometimes for short,
16:43:29	15 the total of the prior four columns. So you're	16:47:57	15 the Roche PCR would be called an enzyme license versus
16:43:32	16 predicting certain cash flows during certain quarters;	16:48:02	16 what shows up a little below it, kit license.
16:43:37	17 is that correct?	16:48:05	17 We had to -- different licensing programs.
16:43:39	18 A. From the context, it doesn't actually say that	16:48:09	18 And so this was part of the aspiration to have new
16:43:44	19 you're forecasting, but because I did not manage this	16:48:15	19 licensees, their upside that would generate additional
16:43:47	20 process this year and it's 2011, I would infer yes, it	16:48:17	20 revenue, part of the annual work of the people in my
16:43:50	21 was the forecast for this year that we put together last	16:48:21	21 group, that were done in my group.
16:43:53	22 year.	16:48:24	22 Q. That makes sense.
16:43:57	23 Q. And then there's a comments column. Changes,	16:48:26	23 A. And they identified these players as someone
16:44:00	24 if there's a change. There's notes. And then on the	16:48:29	24 that might be interested or maybe they were considering
16:44:09	25 next page, it has column N, and it says "Grouping"?	16:48:32	25 conversations already.

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16:48:33	1 Q. And in column D where it says "PCR Chemistry"	16:51:21	1 "Settlement" in column B. That's number 123. So when I
16:48:35	2 here, that would -- that's what it means. It's	16:51:28	2 see settlement, am I correct in assuming there is some
16:48:39	3 consistent with what you just said, which is it has to	16:51:33	3 type of dispute and you're trying to settle it and
16:48:41	4 do with the whole PCR portfolio.	16:51:36	4 you're going to allocate a number to that settlement?
16:48:44	5 A. Right.	16:51:40	5 A. Yes, that is correct. CSS, just going back
16:48:47	6 Q. I see down below the next one it says "New	16:51:44	6 for a moment, I don't remember exactly the acronym, but
16:48:50	7 Passive Reference, four years," four per year. What's	16:51:47	7 as I recall, that's a jargon term possibly in the
16:48:54	8 passive -- passive REF?	16:51:54	8 sequencing business, just -- I can't -- for the moment,
16:48:58	9 A. Passive reference is some IP owned originally	16:51:59	9 I can't place it.
16:49:02	10 by ABI or Applera, relevant to the Roche sublicenses,	16:52:01	10 Q. After we leave here, we'll --
16:49:08	11 but not in that license. And so we -- and in doing	16:52:04	11 A. Yeah, right in the shower.
16:49:15	12 realtime PCR, people will sometimes use a passive	16:52:06	12 Q. And one of your favorite words at 125,
16:49:19	13 reference and our IP covers the use of that passive	16:52:09	13 "Aspirational." That's the catchall, is that it? It's
16:49:23	14 reference.	16:52:13	14 not referring to a specific item, is it?
16:49:24	15 Is that --	16:52:15	15 A. No. "Aspirational" meant -- was the shorthand
16:49:24	16 Q. Yes, it does.	16:52:19	16 I asked my group to use where we had to do it, but we
16:49:26	17 And then I see that same, in the next item --	16:52:25	17 didn't know what it would be yet.
16:49:29	18 when it says four year -- four years, is that the length	16:52:26	18 Q. Got it.
16:49:33	19 of the license?	16:52:27	19 And where it says "Assays" down below, these
16:49:34	20 A. I believe that to be four per year, that I	16:52:29	20 look a little different because it's no longer in the
16:49:37	21 have all of these people on my list, I think I can get	16:52:33	21 PCR chemistries but simply says "Assays" in column D.
16:49:41	22 to four of them this year and I can get to four of them	16:52:33	22 What are these assays?
16:49:44	23 next year. I don't know which ones yet.	16:52:35	23 A. That actually is PCR chemistries, in one
16:49:48	24 Q. And then I see in 112, it has new preamp and	16:52:40	24 sense. PCR chemistries refers to the enzyme, the
16:49:53	25 then another new preamp below that?	16:52:45	25 realtime method. Assays refers -- within ABI, not
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16:49:55	1 A. Yeah.	16:52:50	1 within Life Technologies, assays has a very standard
16:49:56	2 Q. Pre-amplification technologies, I suppose?	16:52:56	2 technical meaning of primer probe sets for doing what's
16:50:01	3 A. Yes. It's sort of a sample prep in the PCR.	16:53:00	3 called Taqman or 5' prime-nuclease method.
16:50:05	4 Q. Still within the PCR chemistries, I see here.	16:53:23	4 Q. And then in column C, again staying in that
16:50:09	5 A. Yeah. And, again, this is IP owned by	16:53:27	5 assay group, has OLA PCR?
16:50:12	6 Life Technologies, not sublicense of Roche IP.	16:53:30	6 A. Uh-huh.
16:50:18	7 Q. How would you know that? Does this tell you	16:53:32	7 Q. What's is that?
16:50:19	8 that, or is that just something that you would know?	16:53:32	8 A. OLA is oligo-linked amplification. It's a
16:50:22	9 A. I have that as knowledge. This is my work.	16:53:42	9 method of actually using antibodies instead of -- using
16:50:26	10 Q. That's why I asked if there was something	16:53:50	10 antibodies linked to primers to identify a protein with
16:50:28	11 here.	16:53:54	11 the antibody and then amplify it with the PCR method.
16:50:31	12 And then it has "New" -- below that, "Other	16:53:59	12 I think that's how -- wait a minute, there's
16:50:34	13 New."	16:54:02	13 OLA and PLA. And I'm sorry, it's getting to the end of
16:50:39	14 A. Yes.	16:54:06	14 the day. I misspoke.
16:50:40	15 Q. And there's a -- it has a number of items	16:54:24	15 PLA is what I just described a moment ago.
16:50:44	16 here, "New DPCR"?	16:54:26	16 OLA is a Oligo ligation assay, I believe is the acronym.
16:50:47	17 A. "DPCR" stands for digital PCR, four per year.	16:54:37	17 It's a method that we have licensed from Cornell
16:50:52	18 And one row is fees, one row is running royalties, to	16:54:40	18 Research Foundation and then out-licensed again. It is
16:50:55	19 sort of break out the difference, what is repeating and	16:54:44	19 a form of amplification where two primers are put
16:50:58	20 what is not repeating.	16:54:48	20 together and that if they allele correctly, then they
16:50:58	21 Q. Keep them straight.	16:54:52	21 will ligate and amplify. So it's almost like a version
16:50:59	22 Then you got the Fluidigm Digital PCR.	16:54:57	22 of PCR.
16:51:04	23 New CSS, what's that?	16:54:58	23 Q. Yeah, exactly.
16:51:09	24 A. At the moment, I'm not placing CSS.	16:54:58	24 Then it says "PNA Clamp"?
16:51:16	25 Q. And then they got a DuPont Qualcomm. It says	16:55:01	25 A. PNA is peptide nucleic acid, which is a



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16:55:08	1 chemistry similar to DNA. And so it's used in some	16:58:12	1 A. Right. And Lou Jaru is -- reported to
16:55:20	2 hybridization. It's used as a primer for some PCR	16:58:18	2 Rolando. So this was kind of just tracking for the
16:55:24	3 reactions. It's a substitute chemistry for DNA.	16:58:22	3 organization where we were dealing with this. And so --
16:55:28	4 Q. And then "Arrays for holijec," that's at 144.	16:58:30	4 I'm sorry, Lou would have been doing the actual work.
16:55:32	5 A. Yeah. I believe that would have been, rather	16:58:33	5 He reported to Rolando, who reported to me. So it was
16:55:37	6 than individual primer probe pairs and assay, it's an	16:58:36	6 just kind of a tracking.
16:55:40	7 array of them.	16:58:38	7 Q. So you all report -- oh, I'm sorry. I did
16:55:41	8 Q. Okay. And I see in 145 we have the ubiquitous	16:58:38	8 that the second time today.
16:55:47	9 aspirational?	16:58:43	9 You're the person in charge and these people
16:55:49	10 A. Yes. "Aspiration" is my term.	16:58:46	10 report to you about the described program or project?
16:55:51	11 Q. And the next page 710 appears to follow the	16:58:53	11 A. Right.
16:55:55	12 same formats we discussed earlier with regard to the	16:58:59	12 Q. So at this date, would you have some idea when
16:55:58	13 quarters. We have DNZ and DNV.	16:59:03	13 this date is? It says printed at the bottom, 2/8/11.
16:56:03	14 A. Those are both related to some DNA sequencing	16:59:06	14 2/8/11 at the bottom, lower left, it has "Update" in
16:56:08	15 technologies, as I recall. Those acronyms I'm not as	16:59:13	15 number 1 on page 712.
16:56:11	16 familiar with. I don't remember what fell into that	16:59:16	16 A. So I'm guessing that that would be about when
16:56:15	17 bucket right now.	16:59:19	17 it was updated, but I don't recall this document.
16:56:16	18 Q. And I see we have that net share with Cornell	16:59:23	18 Q. Yeah. I mean, it's a printed document. So
16:56:19	19 down there at line 137, consistent with your	16:59:25	19 sometimes more difficult. But at about that time, would
16:56:22	20 recollection before you looked at it.	16:59:29	20 this have been a structure, structure we just talked
16:56:24	21 A. Yes.	16:59:32	21 about, where Jaru answers to Brawer, answers to you,
16:56:25	22 Q. Then if you turn to page 712, we have slightly	16:59:36	22 about the projects shown here on page 712? Would that
16:56:30	23 different entries. What is -- it says "Program MBRPRT	16:59:39	23 have been the way it was organized?
16:56:43	24 and MBRGEN"?	16:59:41	24 A. On that day, I'm not sure. Up through the end
16:56:48	25 A. So when we had the divisional structure, MBS	16:59:47	25 of 2010, yes, that was the structure. As we came into
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16:56:53	1 was the division, and the next layer below that, one of	16:59:53	1 2011, Nick Ecos -- we were -- with the day one of the
16:56:58	2 the groups was MBR, molecular biology reagents. I think	16:59:58	2 new year, we were put into a corporate group with a new
16:57:03	3 you saw that on some of the spreadsheets we were talking	17:00:02	3 manager and we were evolving new processes and new
16:57:07	4 about.	17:00:05	4 reporting.
16:57:07	5 Q. I think we saw that before, right?	17:00:06	5 Q. And that's why I asked you that, is because
16:57:09	6 A. And MBR had two categories that I recall:	17:00:08	6 you described the fact that your position and
16:57:13	7 PRT, protein; GEN for genetics.	17:00:11	7 responsibilities changed at some point during 2011.
16:57:21	8 Q. So then in the description, it lists, for	17:00:13	8 A. Right. So rather than make the changes and
16:57:23	9 example, take the first one at line 5, "Dharmacon	17:00:15	9 then be ready to run on January 1, on January 1, we
16:57:27	10 SMARTpools"?	17:00:18	10 started making the changes. And I don't remember what
16:57:29	11 A. Right.	17:00:20	11 day. Because this is the first week in February or the
16:57:30	12 Q. What's that?	17:00:25	12 8th of February.
16:57:31	13 A. Dharmacon is a -- I believe a subsidiary of	17:00:27	13 Q. So you would -- this was --
16:57:37	14 Thermal Fisher, if I'm not mistaken. And so that's the	17:00:31	14 A. It's a residual. I mean, it's a -- it's a
16:57:40	15 identity of the partner, if you will.	17:00:38	15 legacy.
16:57:43	16 SMARTpools is a shorthand for one of the	17:00:38	16 Q. Yeah, a legacy from it.
16:57:46	17 technologies we have where we believed that Dharmacon	17:00:40	17 Then I notice down below, we have -- similar
16:57:49	18 needed a license. And we'd had some discussions with	17:00:43	18 we keep following GA, what is that?
16:57:53	19 them. At that time, I believe we were in discussions	17:00:48	19 A. Genetic analysis.
16:57:57	20 with them, but I think they subsequently broke off.	17:00:49	20 Q. PCR instruments, PCR reagents, I assume those
16:58:01	21 Q. And then the next column it has "Owner, Moehle	17:00:52	21 are exactly what they say they are?
16:58:05	22 Brawer, Jaru"?	17:00:56	22 A. Yes.
16:58:07	23 A. Jaru.	17:00:59	23 Q. It says "A Roche Past Royalty Credit." So is
16:58:08	24 Q. I assume that's you, and the Brawer we've	17:01:03	24 that Roche -- is that Roche that originally had the PCR
16:58:11	25 heard about today.	17:01:09	25 patents you worked with originally? Is that that Roche?



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17:01:20	1 Is that the Hoffmann-La Roche?	17:03:58	1 financials 100 percent probability in Q1." I'm sorry.
17:01:24	2 A. It's part of that organization.	17:04:03	2 I was reading from row 5 as an example.
17:01:26	3 Q. It wasn't a trick question.	17:04:06	3 Q. Yes. And that's what I saw. I can tell that
17:01:28	4 A. No, I was trying to think how to say it.	17:04:08	4 when it says 100 percent, it really just shows the full
17:01:32	5 Q. What's a past royalty credit? Is that a -- if	17:04:13	5 amount. 10 percent is exactly that. They just multiple
17:01:38	6 you remember?	17:04:20	6 10 percent times the column.
17:01:39	7 A. No, I remember.	17:04:22	7 A. Right.
17:01:46	8 Q. I'm not trying to intrude on anything --	17:04:30	8 Q. If we go over to say 715, can you tell me what
17:01:49	9 MS. JOHNSON: I suspect we may be running	17:04:46	9 PCRGAOEM is?
17:01:51	10 into --	17:04:49	10 A. PCR genetic analysis OEM, an opportunity most
17:01:52	11 MR. TROUPIS: The same question about Roche.	17:04:54	11 likely to be manufacturing primers and probes for the
17:01:54	12 MS. JOHNSON: Correct.	17:05:00	12 customer.
17:01:54	13 MR. TROUPIS: Then let's move on, and we'll	17:05:05	13 Q. A more traditional -- you're actually
17:01:57	14 come back to it if we can resolve it after this.	17:05:08	14 producing it for them and they would relabel it or
17:02:00	15 THE WITNESS: It's just part of the same set	17:05:13	15 however they would do it?
17:02:01	16 of discussions.	17:05:14	16 A. Correct.
17:02:02	17 MR. TROUPIS: Q. I do notice that at line 32	17:05:15	17 Q. What does it mean when it says "PCR
17:02:03	18 we have Promega. Do you know what that's referring to,	17:05:17	18 Instruments"? And I'm looking down at 69. And then it
17:02:09	19 the PSSV?	17:05:20	19 has in column B, MMD. And then in that same column, it
17:02:12	20 A. Yeah. Passive reference, as we just talked	17:05:25	20 says "Qiagen 7500 F-DX DIST." Can you interpret that
17:02:14	21 about a moment or two ago. Passive reference. Promega	17:05:30	21 for me?
17:02:19	22 expressed interest, I believe at that point, in taking a	17:05:38	22 A. Part of it I can recognize pretty quickly. I
17:02:22	23 license to our passive referenced IP. It could have	17:05:41	23 was trying to remember what MMD is, see if there's a
17:02:27	24 been that they planned to contact Promega. I don't	17:05:48	24 header on B.
17:02:30	25 recall that the discussion occurred or it was planned or	17:05:50	25 Oh, okay. Yes. So if you go to 712, the
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17:02:33	1 whatever.	17:05:55	1 page 712.
17:02:45	2 Q. Moehle, Cole, Tanaka, and Paducula, these are	17:05:58	2 Q. Yes.
17:02:51	3 people that work here; is that right?	17:05:59	3 A. And you look at the header for column B, row
17:02:53	4 A. Yeah. That's the spelling for Padma,	17:06:03	4 two, it says "X-DIV."
17:02:55	5 Paducula. I couldn't remember how to say her name	17:06:06	5 Q. Yes.
17:03:00	6 earlier.	17:06:06	6 A. So that would be a shorthand for
17:03:00	7 Q. Again, within your group that would follow	17:06:09	7 cross-divisional. So we -- some deals we did were
17:03:02	8 from your first discussion of the --	17:06:13	8 completely internal, but if there was another division,
17:03:04	9 A. Yes.	17:06:16	9 then we had to negotiate the right-of-way, determine who
17:03:05	10 Q. -- lines of authority.	17:06:19	10 gets the money and so forth.
17:03:10	11 A. Yes, correct.	17:06:21	11 And so CCDMMD, these are the other divisions
17:03:21	12 Q. On the next page, 713, we have slightly	17:06:29	12 or groups or whatever. They weren't necessarily
17:03:26	13 different than what we've seen before. It has a cost to	17:06:32	13 divisions, it was just who was the other stakeholder
17:03:28	14 achieve in column G. Then it has H, Q1 percent	17:06:35	14 that we had to work with.
17:03:32	15 probability. What's that mean?	17:06:37	15 Q. Within your own organization?
17:03:36	16 A. What does "Q1 percent probability" mean?	17:06:38	16 A. Within our own organization, yes.
17:03:39	17 Q. Yes.	17:06:42	17 Q. What is 7500F-DX?
17:03:40	18 A. That meant what was the likelihood we thought	17:06:47	18 A. 7500F-DX stands for the -- sometimes called 75
17:03:43	19 that would be achieved in Q1, what's the short-term	17:06:52	19 fast DX. 7500 is a workhorse instrument that we sell
17:03:47	20 forecast on that.	17:06:57	20 for realtime PCR for quite some time. "Fast" refers to
17:03:49	21 Q. On the first quarter?	17:07:02	21 a version of PCR where you can do it fast, literally
17:03:50	22 A. Because this was in February, presumably, or	17:07:07	22 faster. And "DX" means that this particular instrument
17:03:53	23 end of January.	17:07:11	23 has a 510K clearance. So within the guidelines of the
17:03:55	24 Q. Okay. And?	17:07:18	24 FDA, it's approved for diagnostics use.
17:03:56	25 A. As you can see, there's a note. "Agreement on	17:07:22	25 Q. DIST? Did you say that's the DIST or the DX?

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17:07:24	1	A. The DX.	17:10:30	1	we were working all year long.
17:07:25	2	Q. And the DIST?	17:10:35	2	Q. Thank you. I appreciate that explanation.
17:07:27	3	A. Distributor.	17:10:54	3	They can come back. I'm not going to go into
17:07:27	4	What I'm guessing, and without full	17:10:57	4	any other document, and I just have a couple more
17:07:29	5	recollection at the moment, was that Qiagen or Elotech	17:11:00	5	questions.
17:07:32	6	wanted to distribute these. As you know -- well, you	17:11:02	6	(Discussion off the record.)
17:07:36	7	may or may not know -- Qiagen has a diagnostics	17:11:44	7	THE WITNESS: I'd like to amend an answer that
17:07:41	8	division. They sell tests.	17:11:46	8	I made before last break.
17:07:45	9	This discussion, I don't know whether it bore	17:11:48	9	MR. TROUPIS: Q. Got it.
17:07:48	10	fruit, would have been whether we could provide these	17:11:48	10	A. This is with regard to Exhibit 18.
17:07:51	11	instruments for them to sell with their tests and help	17:12:13	11	Q. Okay.
17:07:53	12	them get to the marketplace faster.	17:12:14	12	A. During the break, I thought about this and I
17:07:55	13	Q. And that makes sense, because if I go over to	17:12:17	13	realized I didn't recognize from the writing, but I do
17:07:58	14	page 716 and follow 69 across, I see an allocation, for	17:12:21	14	remember one of the key issues in here and some of the
17:08:05	15	example, of 800,000 per year. So they would have the	17:12:24	15	conversations I'd had with Mr. Dimond.
17:08:07	16	equipment and then they would be paying you an equipment	17:12:26	16	Shortly after the agreement was implemented,
17:08:11	17	charge? I'm just following.	17:12:29	17	Applied Biosystems took a position and paid less
17:08:14	18	A. Yeah, yeah. No, I'm trying to remember	17:12:34	18	royalties. And that was brought to the attention in
17:08:16	19	exactly what N is. Just check the title. "What is	17:12:36	19	here. And on reflecting on this email, we reversed that
17:08:22	20	Needed to Achieve the Plan or Other Notes" on 713, is	17:12:41	20	position and paid those royalties, the details of which
17:08:27	21	the header for Qiagen.	17:12:45	21	are largely attorney-client privilege, but I do remember
17:08:32	22	And so here, that's likely an estimate of a --	17:12:51	22	my personal response at let's just say embarrassment.
17:08:40	23	so the percent probability is very low to zero. This is	17:12:55	23	Q. And that's my understanding as well, is that
17:08:45	24	a funnel of opportunities, and I believe that that	17:12:59	24	it was resolved and --
17:08:48	25	number would have been an estimate of the likely value	17:13:01	25	A. That's my recollection, very quickly resolved.
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17:08:51	1	if the deal went through. Qiagen would buy that many	17:13:04	1	Q. Thank you very much.
17:08:57	2	dollars' worth of instruments every year.	17:13:12	2	The last time, actually the last time we got
17:09:08	3	Q. So in a very real sense, this is a planning	17:13:15	3	together in January of 2010, down in Carlsbad,
17:09:11	4	document, as you said earlier, aspirational items, that	17:13:18	4	Dr. Dimond asked you to inquire about whether sales were
17:09:15	5	might or might not happen when you're trying to predict	17:13:26	5	being made into the clinical market and by this company
17:09:18	6	their outcomes for the upcoming year?	17:13:31	6	and how much were the STRs.
17:09:20	7	A. It's a close management of how the year is	17:13:35	7	And my question is, did you make that inquiry
17:09:22	8	developing, what do we see close, medium, and far	17:13:39	8	and did you reach any conclusion?
17:09:25	9	likelihood, probabilities, and so that we could report	17:13:44	9	MS. JOHNSON: And I would caution you not to
17:09:29	10	to our management how much to put into their forecasts	17:13:46	10	divulge any attorney-client privileged information. I
17:09:32	11	from our contribution.	17:13:49	11	don't know if you can answer that question without doing
17:09:35	12	Q. Is this all -- this all appears to be	17:13:51	12	so, but if you can.
17:09:39	13	licensing or OEM, this document we just looked at, 706	17:13:55	13	And before you answer, I guess I would also
17:09:44	14	to 718. Was this just licensing and OEM?	17:13:57	14	state for the record, I can't recall if there was a 408
17:09:53	15	A. Versus?	17:14:04	15	agreement governing those discussions.
17:09:54	16	Q. Product sales.	17:14:06	16	MR. TROUPIS: There was.
17:09:55	17	A. Correct.	17:14:07	17	MS. JOHNSON: So to the extent there was, I
17:10:00	18	If I could clarify, on occasion a product sale	17:14:08	18	just want to make that point.
17:10:05	19	would show up in here if for some reason our group could	17:14:10	19	MR. TROUPIS: Yes --
17:10:09	20	facilitate a contract. And we would try to say, look,	17:14:13	20	THE WITNESS: We had a couple of discussions
17:10:13	21	this isn't in our direct reporting, but we want some	17:14:15	21	around that area. I remember Dr. Dimond raising the
17:10:19	22	recognition that we helped make this sale happen. So we	17:14:18	22	concern. Any analysis we did, or I did, at any rate,
17:10:22	23	would send our people out to help make a sale sometimes.	17:14:25	23	would have been with my attorney. I would not have done
17:10:26	24	That way we didn't fight over who got the money. We	17:14:28	24	that as an independent investigation.
17:10:26	25	didn't want to care about that. We wanted to show that	17:14:30	25	MR. TROUPIS: Q. So any of the conclusion you

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17:14:32	1 reached, if you did, you would have shared it with your	17:17:31	1 point of clarification, one question for you.
17:14:35	2 attorney and you would consider it privileged?	17:17:33	2 --oOo--
17:14:39	3 A. I believe so. Anything I can think of at the	17:17:34	3 EXAMINATION BY MS. JOHNSON
17:14:41	4 moment would have been with my attorney and therefore	17:17:35	4 MS. JOHNSON: Q. Did you have any
17:14:44	5 privileged.	17:17:36	5 responsibility for obtaining any consents with respect
17:14:52	6 Q. We talked about the GOLC group, and I left off	17:17:40	6 to the merger of Applera and Invitrogen Corporation?
17:14:58	7 one question, which was, was there an incentive program	17:17:47	7 THE WITNESS: Did you want to object?
17:15:05	8 for employees for the results of the GOLC committee	17:17:51	8 MR. TROUPIS: I'm trying to -- could you
17:15:12	9 action activities?	17:17:52	9 repeat the question? I'm sure it was carefully worded,
17:15:17	10 A. Can you be more specific?	17:17:55	10 but I don't understand it.
17:15:19	11 Q. Sure. In many settings, you would have some	17:18:12	11 (Record read by the reporter.)
17:15:24	12 kind of a bonus or other incentive payment for	17:18:15	12 THE WITNESS: No, I had no role in obtaining
17:15:27	13 increasing the revenues of the company, say if you're a	17:18:18	13 any of the consents. I was not part of the tracking of
17:15:31	14 salesman or whatever. The GOLC was similar in a general	17:18:22	14 them or instigating any of them.
17:15:37	15 way to that. Thus my question was, you had forecasts,	17:18:25	15 MR. TROUPIS: That's it. Thank you very much.
17:15:41	16 you had predictions, you had outcomes, was there any	17:18:28	16 We'll get together every five years or so.
17:15:45	17 incentive payment for the members of the committee or	17:18:32	17 THE VIDEOGRAPHER: Here marks the end of Video
17:15:48	18 the group for results achieved?	17:18:34	18 No. 3 in the deposition of Dr. Charles M. Moehle. The
17:15:52	19 A. To my regret -- no. Not in a sort of salesman	17:18:37	19 original videos will be retained by Combs Reporting, 595
17:15:57	20 commission reward, based on individual, you know, tied	17:18:40	20 Market Street, Suite 620, San Francisco, California.
17:16:01	21 to specific individual effort.	17:18:45	21 Time is 5:18 p.m.
17:16:03	22 Q. I thought you would know the answer to that	08:44:11	22 --oOo--
17:16:06	23 one.	08:44:16	23 (Whereupon, the deposition adjourned at
17:16:09	24 Do you know whether you will be available to	08:44:16	24 5:18 p.m.)
17:16:11	25 testify at the trial on February 6th in Madison,	08:44:16	25 --oOo--
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17:16:14	1 Wisconsin, on this matter that we're discussing today?	08:44:16	1 I declare under penalty of perjury that the
17:16:20	2 MS. JOHNSON: Well, I guess what do you mean	08:44:16	2 foregoing is true and correct. Subscribed at
17:16:21	3 by "available"?	08:44:16	3 _____, California, this ____ day
17:16:23	4 MR. TROUPIS: Q. Will you available to attend	08:44:16	4 of _____, 2011.
17:16:25	5 the trial to testify?	08:44:16	5
17:16:26	6 A. I don't know the answer. I hadn't given it	08:44:16	6
17:16:29	7 thought, so I don't know.	08:44:16	7
17:16:39	8 Q. Have you come to any conclusion about	08:44:16	8 CHARLES MOEHLE
17:16:40	9 testimony you might give at that trial, if any?		9
17:16:46	10 MS. JOHNSON: And I would caution you not to		10
17:16:48	11 divulge any privileged communications with attorneys.		11
17:16:51	12 THE WITNESS: Yeah. The truth? I'm sorry. I		12
17:16:57	13 don't know how to answer your question.		13
17:16:59	14 MR. TROUPIS: Q. No, no. It's really a very		14
17:17:01	15 general question. We normally ask at this point,		15
17:17:05	16 frankly, in depositions at this stage of the		16
17:17:06	17 proceedings, which is, whether or not you know whether		17
17:17:08	18 you're going to testify and if you -- or if you know		18
17:17:11	19 what the substance of your testimony will be at trial.		19
17:17:14	20 A. I do not know if I will testify. And I guess		20
17:17:18	21 since I don't know, I can't know what the other would		21
17:17:21	22 be.		22
17:17:23	23 Q. That's fine.		23
17:17:25	24 That's all my questions. Thank you.		24
17:17:30	25 MS. JOHNSON: Dr. Moehle, I just have one		25

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08:44:16	1	CERTIFICATE OF REPORTER
08:44:16	2	I, BRANDON D. COMBS, a Certified Shorthand
08:44:16	3	Reporter, hereby certify that the witness in the
08:44:16	4	foregoing deposition was by me duly sworn to tell the
08:44:16	5	truth, the whole truth, and nothing but the truth in the
08:44:16	6	within-entitled cause;
08:44:16	7	That said deposition was taken in shorthand by
08:44:16	8	me, a disinterested person, at the time and place
08:44:16	9	therein stated, and that the testimony of the said
08:44:16	10	witness was thereafter reduced to typewriting, by
08:44:16	11	computer, under my direction and supervision;
08:44:16	12	That before completion of the deposition,
08:44:16	13	review of the transcript was not requested. If
08:44:16	14	requested, any changes made by the deponent (and
08:44:16	15	provided to the reporter) during the period allowed are
08:44:16	16	appended hereto.
08:44:16	17	I further certify that I am not of counsel or
08:44:16	18	attorney for either or any of the parties to the said
08:44:16	19	deposition, nor in any way interested in the event of
08:44:16	20	this cause, and that I am not related to any of the
08:44:16	21	parties thereto.
08:44:16	22	DATED: December 13, 2011.
08:44:16	23	
08:44:16	24	BRANDON D. COMBS, CSR 12978
	25	

